

91-598

No. _____

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1991

—————♦—————
FORSYTH COUNTY, GEORGIA,

Petitioner,
vs.

THE NATIONALIST MOVEMENT,

Respondent.

—————♦—————
**Petition For Writ Of Certiorari To The United States
Court Of Appeals For The Eleventh Circuit**

—————♦—————
PETITION FOR WRIT OF CERTIORARI

—————♦—————
McVAY & STUBBS

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QUESTION PRESENTED

Whether the provisions of the First Amendment to the United States Constitution limit the amount of a license fee assessed pursuant to the provisions of a county parade ordinance to a nominal sum or whether the amount of the license fee may take into account the actual expense incident to the administration of the ordinance and the maintenance of public order in the matter licensed, up to the sum of \$1,000.00 per day of the activity.

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STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

Jurisdiction is invoked pursuant to the provisions of Title 28 United States Code, Section 1254(1), as Petitioner is a party to a civil case where an adverse judgment was rendered by the United States Court of Appeals for the Eleventh Circuit on July 5, 1991.

CONSTITUTIONAL PROVISIONS AND LOCAL ORDINANCES

Amendment I to the Constitution of the United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 3, subsection (6) of Forsyth County Ordinance No. 34:

Every private organization or group of private persons required to procure a permit under the provisions of this Ordinance shall pay in advance for such permit, for the use of the County, a sum not more than \$1,000.00 for each day such parade, procession, or open air public meeting shall take place. The Administrator shall adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed. In no event shall the Administrator calculate the amount of the permit fee by considering said fee as a revenue tax.

The full text is attached as a part of the Appendix H.

STATEMENT OF THE CASE

1. Course of Proceedings and Disposition Below.

On January 19, 1989, Respondent Nationalist Movement filed suit in the United States District Court, Northern District of Georgia, Gainesville Division, against Forsyth County, Georgia, seeking a temporary restraining order enjoining Forsyth County from interfering with Respondent's plans to conduct a rally on the courthouse grounds in Cumming, Forsyth County, Georgia, on January 21, 1989. R-1-1. Respondent requested a declaratory judgment that the Forsyth County ordinance regulating parades was unconstitutional because it charged an administrative permit fee to all non-profit corporations desiring to parade and rally in the County. R-1-1. Jurisdiction in the district court was grounded upon Title 28 United States Code, sections 1331, 1343, 2201, and 2202.

The Court heard oral argument on the merits in a hearing conducted on January 19, 1989. R-3.

On January 23, 1989, the district court entered an Order finding that the Forsyth County ordinance was not unconstitutional on its face or as applied and thus denied Respondent's petition for a temporary restraining order. R-1-7; Appendix A.

Respondent noted its appeal on May 17, 1989. R-2-22.

On October 2, 1990, a panel of the United States Court of Appeals for the Eleventh Circuit held Forsyth County's Ordinance 34 facially unconstitutional on the basis that it permits a charge of up to \$1,000.00 for a permit for activities covered by the Ordinance and that that sum "exceeds the constitutional requirement that such a charge be at most nominal." *Nationalist Movement v. City of Cumming, et al.*, 913 F.2d 885, 891 (11th Cir. 1990); Appendix B at 31.

Forsyth County filed its Suggestion of Rehearing En Banc on October 22, 1990, which was granted by the Court of Appeals on December 18, 1990, which action vacated the panel decision. *Nationalist Movement v. City of Cumming, et al.*, 921 F.2d 1125 (11th Cir. 1990); Appendix C. On July 5, 1991, the en banc Court of Appeals reinstated the Panel decision. *Nationalist Movement v. City of Cumming, et al.*, 934 F.2d 1482 (11th Cir. 1991); Appendix D.

2. Statement of Facts.

On January 17, 1987, Hosea Williams, an Atlanta civil rights personality, led a small march in Forsyth County,

Georgia. Appendix E (Atlanta Journal & Constitution, (hereinafter, Atl. J & C) January 18, 1987). That march was halted by protestors throwing rocks and bottles. *Id.* On January 24, 1987, Mr. Williams returned to Forsyth County with approximately 20,000 marchers who were greeted by approximately 1,200 counterdemonstrators. Appendix F (Atl. J & C, Jan. 25, 1987). Extraordinary expenses shared by state and local law enforcement officers approximated \$679,148.00 for the second march. Appendix G (Atl. J & C, Feb. 4, 1987).

On January 27, 1987, the Forsyth County Board of Commissioners (hereinafter "Board") enacted Ordinance 34 "to provide for the issuance of permits for parades, assemblies, demonstrations, road closing, [etc.]" Appendix H, pp. 98-111 (FC Ex. 1). Ordinance 34 was duly amended February 23, 1987 (*Id.* at 112-116), June 8, 1987, (*Id.* at 117-123) and April 25, 1988¹ (*Id.* at 124-126). Among the findings by the Board was that "the cost of necessary and reasonable protection of persons participating in or observing said [activities] exceeds the usual and normal cost of law enforcement for which those participating should be held accountable and responsible." Appendix H at 100.

The Board further found that "the cost of additional protection [could] be estimated by the County Administrator . . . and any surplus [paid] refunded to those sponsoring the [activity]." *Id.* At the time of the Board's second amendment to Ordinance 34, on June 8, 1987, the

¹ The final amendment reflects a date of April 25, 1987, which is a typographical error since the amendment refers to an earlier amendment of June 8, 1987.

Board found that "serious constitutional objections have been raised to Ordinance Number 34, specifically the fee aspects . . ." ² *Id.* at 118. That amendment included a change to section 3 of the ordinance in that a new subsection (6) was inserted authorizing an advance permit fee of

not more than \$1,000.00 for each day such [activity] shall take place. The Administrator shall adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed. In no event shall the Administrator calculate the amount of the permit fee by considering said fee as a revenue tax.³

Id. at 119.

In the meantime, as a result of an order by Honorable William C. Kelley, in the case of *Forsyth County Defense League v. Forsyth County*, C.A. No. C-87-31G (N.D.Ga. 1987) (Appendix I) a subsidiary of Respondent, the Forsyth County Defense League, Appendices J & K, had staged a rally upon the Forsyth County Courthouse grounds on March 14, 1987. Appendix L (Atl. J & C, March 15, 1987).

On January 16, 1988, Hosea Williams returned to Forsyth County. Appendix M (Atl. J & C, Jan. 17, 1988).

² The constitutional objection was recognition of the case of *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515 (11th Cir. 1985), cert. denied, 475 U.S. 1120 (1986).

³ The language of the amendment was lifted from the opinion in *Cox v. New Hampshire*, 312 U.S. 569, 577 (1941).

On January 23, 1988, Richard Barrett, Respondent's attorney, led another rally and march in Forsyth County. Appendix N (Atl. J & C, Jan. 24, 1988)

In 1989, Forsyth County was spared from further marches, etc. by the litigation now before the Court. Respondent had been issued a permit contingent upon payment of a \$100.00 fee. R-3-134; R-1-7-13. The fee was determined by a calculation of the time spent by the Forsyth County Administrator, Donald Major, processing Respondent's application for a permit. R-3-135-138, 158; R-17-14-15; Appendix O (FC Ex. 2). The fee was not paid and no assembly on courthouse grounds occurred as requested in January, 1989. R-3-138.

During various periods in 1987, the Forsyth County Defense League, a subsidiary of Appellant, was permitted use of a meeting room in the County courthouse for its regular meetings. Appendices J, P, Q, R, T, U, V & W. It has also had other meetings and rallies on private property in Forsyth County. Appendices P, S, & U.

ARGUMENT

I. THIS COURT'S DECISIONS IN COX V. NEW HAMPSHIRE, 312 U.S. 569 (1941) AND MURDOCK V. PENNSYLVANIA, 319 U.S. 105 (1943), DO NOT LIMIT LICENSE FEES DEFRAYING ADMINISTRATIVE AND MAINTENANCE OF PUBLIC ORDER COSTS TO A "NOMINAL" SUM.

Counties and municipalities face numerous requests for permission to use public property for uses ranging from celebratory (patriotic parades), to commercial

(handbill distribution), to religious (Macy's Christmas parade), to athletic (Boston marathon), to political - both traditional and protestant (campaign parades and civil rights protests). All of these requests involve administrative effort and maintenance of public order. The issue in this case is whether applicants for such uses are entitled to local government subsidies of the administrative and public order costs associated with the requested activities, even when, as here, they do not contribute taxes to the government providing the subsidy. The Court of Appeals found an ordinance imposing more than a nominal charge facially unconstitutional. Petitioner requests that this Court correct this uncalled for departure from established constitutional precedent and allow local government in Alabama, Georgia and Florida to regain control of their administrative and public safety budgets as they respond to requests for use of public property at public expense.

In 1941 this Court reviewed a New Hampshire public law which prohibited the performance or exhibition of theatrical or dramatic representations, parades or processions upon any public streets or ways, or open air public meetings upon any ground abutting thereon without a special license. The fees for the license were to be paid in advance in a sum not more than \$300.00 for each day a performance, exhibition, procession or open air public meeting was to take place. *Cox v. New Hampshire*, 312 U.S. 569, 571 (1941). The case came to this Court as a criminal case because the marchers in the City of Manchester, New Hampshire on July 8, 1939, did not apply for a permit and none was issued. *Id.* at 572. This Court affirmed the Supreme Court of New Hampshire which affirmed the

convictions by saying that "[t]here is nothing contrary to the Constitution in the charge of a fee limited to the purpose stated." *Id.* at 577. The purpose stated by the Supreme Court of New Hampshire was to "meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed." *Id.* This Court went on to say that "we perceive no constitutional ground for denying to local governments that flexibility of adjustment of fees which in the light of varying conditions would tend to conserve rather than impair the liberty sought." *Id.*

In beginning the discussion of the fee this Court said

There remains the question of license fees which, as the Court said, had a permissible range from \$300.00 to a "nominal" amount.

Id. at 576. From this statement this Court certainly appeared to say that \$300.00 was not a nominal amount in 1941.

In 1943, this Court issued its decision in *Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105 (1943). That case dealt with a City of Jeannette, Pennsylvania, ordinance which provided that persons canvassing or soliciting within a borough, were required to procure a license in an amount represented by a sliding scale determined by the number of days or weeks the solicitations were to occur. In striking down the ordinance this Court found a multitude of problems such as the First Amendment prohibition against preventing distribution of hand bills in pursuit of a clearly religious activity, the First Amendment prohibition of taxation on the exercise of a constitutional right and that a flat fee not calculated to defray the

expense of protecting those on the streets and at home against the abuse of solicitors was demanded. *Id.* In reversing the convictions this Court stated:

and the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against abuses of solicitors. See *Cox v. New Hampshire*, *supra*, 312 U.S. at 576, 577. . . .

Murdock, supra at 116.

From this quotation the Court of Appeals below has fashioned, as the law of the Eleventh Circuit, a rule that if a municipality charges fees for the use of the public streets then such fees must be both nominal and related to the expenses incidental to the policing of the event. *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1522 (11th Cir. 1985), *cert. denied* 475 U.S. 1120 (1986). That holding by a split panel of the Eleventh Circuit has now been confirmed en banc in this case. *Nationalist Movement v. City of Cumming, et al.*, 913 F.2d 885, *vacated* 921 F.2d 1125 (1990), *reinstated*, 934 F.2d 1482 (11th Cir. 1991) (en banc).

When the Court of Appeals' pronouncement occurred, in the *Central Florida* case, the Court stated that

[t]he Supreme Court has not heard a First Amendment service charge case since *Murdock* in 1943 and as a consequence, there has been no further guidance by the Court on the application of the *Cox* rationale to the modern free speech cases.

Central Florida, 774 F.2d at 1522.

Three of the circuit judges dissented in the case below on the issue of whether only nominal charges are constitutionally authorized for the use of city streets and parks in connection with parades and rallies in furtherance of First Amendment activities. 934 F.2d at 1493. Additionally, one circuit judge dissented from the *Central Florida* panel decision for the same reason. 774 F.2d at 1527.

As pointed out by the majority in the *Central Florida* case, this Court has provided no guidance as to the continued vitality of *Cox* to the problems faced by local government in controlling expensive exercises of First Amendment rights and protecting those invoking those rights in almost fifty years. The Court of Appeals below has restricted local government in three states to nominal charges for the exercise of expensive duties of protection, administration and control of ever escalating demonstrations by the citizenry. Such a position is unfair to local government and dangerous to the citizens which local government is obliged to protect and govern. *Cox, supra* at 574. The complete indifference the Court of Appeals has shown to the financial pressures being brought to bear on local government from those wishing to express their views in massive rallies and demonstrations is cause for great concern by local government in the affected states and serves as a valid reason for this Court to provide direction in what has become an ever increasing fiscal and security problem for local government.

The Court of Appeals below has, in this case and in the *Central Florida* case in 1985, restricted without reason and contrary to the holding of this Court in *Cox* the

ability of local government to defray its costs of administering and policing use of its streets and property by those wishing to express their First Amendment views. Taken to its logical extreme, the financial burden cast upon local government to protect both those expressing their views and those in the audience may one day result in a breakdown in that protection with the result that government is simply unable to provide a safe atmosphere for the expression of First Amendment views. *Cox, supra* at 574. As most suitably put by Judge Henderson, dissenting in *Central Florida*,

[a]lthough it would be a laudable gesture for local governments to subsidize the free expression of speech, it is not required by the Constitution.

Central Florida, 774 F.2d at 1529.

The Court of Appeals' decisions below and in the *Central Florida* case in 1985, also fail to consider new pronouncements by this Court concerning governmental regulation in time, place, or manner cases.

Our cases make clear, however, that even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions "are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." [citations omitted]

...
 The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of a disagreement with the message it conveys. [citation omitted] The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others. [citation omitted] Government regulation of expressive activity is content-neutral so long as it is "justified without reference to the content of the regulated speech." [citations omitted]

Ward v. Rock Against Racism, 491 U.S. 781, 109 S.Ct. 2746, 2753-2754 (1989). Additionally, petitioner has shown the Court of Appeals a significant governmental interest in the fee aspects of the ordinance, that is, defraying of proven expensive costs of administration of the ordinance and protection of citizens, Appendix H at 100, 119, and respondent has had ample opportunity to express its message in alternative places and at alternative times. Appendices J, P-W. The Court of Appeals simply refused to invoke those considerations most recently enunciated by this Court in *Ward v. Rock Against Racism*, *supra*, in determining whether the Forsyth County Ordinance was consistent with the provisions of the First Amendment.

Therefore, the Court of Appeals below has failed to adhere to the prior decisions of this Court, thus justifying this Court's acceptance of jurisdiction for the purpose of maintaining adherence to accepted precedent.

II. THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DISAGREES WITH THE COURTS OF APPEALS FOR THE NINTH CIRCUIT AND THE SIXTH CIRCUIT AS TO WHETHER THIS COURT'S DECISIONS IN COX V. NEW HAMPSHIRE, 312 U.S. 569 (1941) AND MURDOCK V. PENNSYLVANIA, 319 U.S. 105 (1943) LIMIT CHARGES FOR USE OF A PUBLIC FORUM TO "NOMINAL" CHARGES.

As stated by Judge Fay, concurring in the original panel decision below, the Court of Appeals for the Ninth Circuit has recognized that "it does not violate the First Amendment for a public entity to collect charges that fairly reflect costs incurred by the municipality in connection with an activity involving expression." *Kaplan v. County of Los Angeles*, 894 F.2d 1076, 1081 (9th Cir.), cert. denied, 110 S.Ct. 2590 (1990). That Court also noted that the language this Court used in the *Murdock* case "is not a statement that *only* nominal charges to defray expenses are constitutionally permissible." *Id.*

Even more recently, in a case in which certiorari has been requested in this Court, the Court of Appeals for the Sixth Circuit has rejected the Eleventh Circuit approach in *Central Florida*, *supra*, and upheld the constitutionality of an ordinance requiring payment of an \$85.00 administrative filing fee and a traffic control cost assessed by the Director of Public Safety. *Stonewall Union v. City of Columbus*, 931 F.2d 1130 (6th Cir. 1991), cert. applied for, Docket No. 91-205.

Therefore, this Court should also hear this case to decide the conflict between the Court of Appeals for the Eleventh and Sixth and Ninth Circuits which have read

this Court's pronouncements in *Cox* and *Murdock* in irreconcilable ways.

CONCLUSION

For the reasons stated, maintaining established precedent which protects the public fisc and erasing the disarray between the Courts of Appeal addressing this constitutional question, Petitioner respectfully requests that this Court issue a Writ of Certiorari and hear this case.

Respectfully submitted this 26th day of September, 1991.

MCVAY & STUBBS

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App. 1

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA GAINESVILLE DIVISION

THE NATIONALIST MOVEMENT, :	
a Mississippi non-profit	:
corporation incorporated in	:
Georgia	2:89-CV-06-WCO
VERSUS	
CITY OF CUMMING, GEORGIA; :	
FORSYTH COUNTY, GEORGIA; :	
and FORSYTH COUNTY BOARD	:
OF EDUCATION	

ORDER

The Nationalist Movement filed this action on January 19, 1989, for the purpose of obtaining a temporary restraining order and permanent injunction prohibiting the defendants from interfering with plaintiff's plans to hold a parade and rally in the City of Cumming, Forsyth County, Georgia on January 21, 1989. On January 19, 1989, the parties appeared before the court for a hearing on (1) the application of attorney Richard Barrett to appear before the court *pro hac vice*, (2) on the plaintiff's application for leave to proceed *in forma pauperis*, and (3) on the merits of the action.

Application to Proceed Pro Hac Vice

After hearing argument of counsel, the court orally granted the application of attorney Richard Barrett to proceed *pro hac vice*. Due to certain matters which

occurred during the course of the trial, the court reconsidered its decision, but reluctantly allowed Barrett to complete the hearing so that the emergency matter could be heard without further delay. However, the court announced that, due to his actions, Barrett would not again be allowed to proceed *pro hac vice* before this court. Consequently, the court feels that it is appropriate to set forth in some detail the reasons for the court's ruling.

Plaintiff, the Nationalist Movement, is a non-profit corporation chartered in Mississippi with its principal office located in Jackson, Mississippi. Plaintiff is licensed to do business in Georgia. Plaintiff's attorney, Richard Barrett, is licensed to practice law in the state of Mississippi and states on his application that he is a member of the bar of the United States Supreme Court.

In 1987, Barrett was granted permission to practice *pro hac vice* before this same court in a similar case. *See Forsyth County Defense League v. City of Cumming*, No. 2:87-CV-31. Upon inquiry, the court learned that Barrett has also practiced in a *pro hac vice* status on two other occasions in the Northern District of Georgia. Thus, the court learned that Barrett has been granted leave to appear *pro hac vice* on at least three occasions within the last two years. In addition, Barrett has represented himself in yet another action which is on appeal to the Eleventh Circuit Court of Appeals.

The court expressed serious concerns that Barrett is regularly practicing law in the courts of Georgia and is abusing this Court's Local Rules allowing attorneys to appear *pro hac vice*. In response to these concerns, Barrett informed the court that he has applied for admission to

the Georgia bar and was allowed to take the bar exam; however, the "Fitness Board" has not certified him for admission and the Office of Bar Admissions has not released the results of his examination. The court asked Barrett if he knew why his certification process was taking so long or why the bar had not yet certified him fit to practice law and Barrett said "no"; he had no idea whatsoever. The court finds that such a response is entirely inconsistent with the Bar's own rules and commonly accepted principles of due process. If the Georgia Bar questions Barrett's fitness to practice law, then this court would certainly share that concern.

Local Rule 110-2 provides that non-resident attorneys who are active members of the bar of the Supreme Court or the highest court of a state may be permitted to appear *pro hac vice*. "*Pro hac vice*" means "for this turn" or "for this one particular occasion." Black's Law Dictionary, 5th ed. 1979. The decision whether *pro hac vice* status should be granted or revoked is within the sound discretion of the district court. *D.H. Overmyer Co. Inc. v. Robson*, 750 F.2d 31, 33 (6th Cir. 1984). *Pro hac vice* is a privilege and is not intended to be used as a subterfuge to avoid admission to the bar of this court.

Moreover, a court may revoke *pro hac vice* status or deny such status in future cases if the court observes unethical or illegal conduct by the attorney. *United States v. Dinitz*, 538 F.2d 1214, 1223-24 (5th Cir. 1976), cert. denied, 429 U.S. 1104 (1977). In the instant case, the court finds that attorney Barrett attempted to deceive the court by eliciting false or improper testimony from his witness. While Barrett was given an opportunity to respond, the

court finds that his explanation for his conduct was unsatisfactory.

Attorney Barrett called Dennis Wheeler as the plaintiff's first witness. Since one of the issues in the case was whether the plaintiff organization had the funds to pay the fee imposed by the city, Wheeler was called as an officer of the organization to testify as to the financial assets of plaintiff and to authenticate certain business records.

On direct examination, Wheeler testified that he was the "acting" secretary of the organization, that he had reviewed the corporation's financial affidavit, and that the affidavit accurately reflected the organization's financial situation. Wheeler also testified that he had reviewed Plaintiff's exhibit No. 1, which consisted largely of correspondence between the parties, and that these documents were maintained in the normal course of the plaintiff's business.

Wheeler also testified as to the goals of the movement, the reasons why they wished to hold a parade and rally, and that the plaintiff had never been charged a fee by other counties or municipalities. Barrett also elicited testimony from Wheeler about events that took place at a city council meeting in the City of Cumming. Wheeler qualified his answer in several instances by stating that his response was "to the best of his knowledge."

Barrett then moved for admission of the documents and the financial affidavit. The defendants objected and began to cross-examine Wheeler. On cross-examination it was revealed that Wheeler had been appointed "acting"

secretary by Barrett only a few hours prior to his testimony. Wheeler had no knowledge of the plaintiff's corporate organization or by-laws. Wheeler admitted that he is not the custodian of the plaintiff's records, that he believes that they are kept in Jackson, Mississippi, and that other than the documents Barrett had provided him that morning, he had never examined the books and records of plaintiff. Wheeler admitted that he had no personal knowledge of the financial status of plaintiff and has never seen any bank statements. Wheeler also admitted that he had never attended a Cumming city council meeting and that he had received all his information from Barrett.

Defendants moved to strike Wheeler's testimony in its entirety and after hearing from Barrett, the court granted the motion. On the record, the court expressed serious concern as to whether the attorney had attempted to commit a fraud upon the court. The court noted then and reiterates now that Wheeler, the witness, attempted to avoid committing perjury by qualifying his answers and when questioned on cross-examination, freely admitted that he had no personal knowledge of the majority of the matters he had been asked about on direct examination. Therefore, the court does not find that there was any intentional wrongdoing on the part of Mr. Wheeler.

Canon 7 of the Georgia Code of Professional Responsibility provides that "A lawyer should represent a client zealously within the Bounds of the Law." However, while an attorney should be "zealous", the disciplinary rules provide that a lawyer shall not "knowingly use perjured testimony" or "counsel or assist his client in conduct that

the lawyer knows to be illegal or fraudulent." Disciplinary Rules 7-102(4) and (7).

In the instant case, counsel knowingly called a witness to the witness stand and represented, or at least intentionally led the court and parties to believe, that the witness was a regular officer of the corporation when in fact the witness was not. In essence, the attorney "manufactured" or "created" the witness that very morning by appointing him to the office of "acting" secretary of the corporation. The court finds that the attorney was attempting to perpetrate a fraud upon the court by these actions.

In addition, the attorney came dangerously close to procuring perjured testimony by asking his own witness about events and documents of which the witness had no actual knowledge when the attorney *clearly knew that the witness did not possess such knowledge*. Explanations of lack of time or funds to produce the proper witnesses do not excuse such conduct.

When defense counsel attempted to elicit the truth about the above matter, Attorney Barrett persisted in making frivolous objections based upon the attorney/client privilege. However, counsel for defendant City of Cumming obtained a certified copy of records from the Secretary of State's office showing that Barrett is the Chief Executive Officer of the Nationalist Movement. See City of Cumming Exhibit No. 1. Moreover, another exhibit shows that it is Barrett who seeks to make a speech at the rally in Forsyth County. See Exhibit I, *City of Cumming Response to Motion for Temporary Restraining*

Order. Thus, Barrett is actually representing his own personal interests and it is unethical for him to try to shield the discovery of the true facts by use of the attorney/client privilege.

And finally, the court finds that Barrett violated Disciplinary Rule 7-102(1) which prohibits an attorney from taking an action on behalf of his client when he knows that it would serve merely to harass or maliciously injure another. In conjunction with this rule, Ethical Consideration 7-25 provides that the attorney should not ask a witness a question solely for the purpose of embarrassing him.

In the instant case, Barrett asked one defense witness whether he was a veteran. This question was irrelevant and impertinent and the witness' negative response was later used by Barrett to begin an improper closing argument. This argument was designed to inflame the trier of fact and to embarrass and cast disparagement upon the witness and other individuals similarly situated. Such conduct by an attorney will not be tolerated by this court.

Accordingly, attorney Barrett is hereby on notice that the court will not grant any future applications to appear *pro hac vice* due to the misconduct which occurred during the hearing in this action.

Application for Leave to Proceed in forma pauperis

The second matter heard before the court was the application of the plaintiff for leave to proceed *in forma pauperis*. This court denied the application on the grounds

that plaintiff is a corporation and corporations may not proceed *in forma pauperis* under 28 U.S.C § 1915.

As noted above, the Nationalist Movement is incorporated under the laws of Mississippi as a non-profit charitable corporation. According to the affidavit submitted in support of the application, the plaintiff is qualified to do business in Georgia and is incorporated in Georgia as a non-profit charitable corporation. The affidavit states that the corporate bank account contains the sum of \$90.59 and the only assets of the corporation are some flags, supplies and printed matter which are of nominal value.

Section 1915(a) permits the court to authorize "a person" to commence an action without prepayment of fees and costs if the person makes an affidavit that he is unable to pay such costs. The question is whether or not plaintiff is "a person" for purposes of section 1915(a).

The Eleventh Circuit has not yet addressed this issue; however, the Fifth Circuit recently was confronted with the issue in *FDM Manuf. Co. v. Scottsdale Ins. Co.*, 855 F.2d 213 (5th Cir. 1988). The Fifth Circuit traced the legislative history of Section 1915(a) and concluded that Congress did not intend to include corporations within the reach of the statute. *Id.* at 214.

The original version of section 1915 used the term "citizen" rather than "person." Previous courts, including the former Fifth Circuit, have held that a corporation was not a "citizen". See *Atlantic S.S. Corp. v. Kelley*, 79 F.2d 339, 340 (5th Cir. 1935)(denial of *in forma pauperis* status for corporation on appeal). However, in 1959, Congress amended the statute and changed only the one word. As

noted in *FDM Manufacturing*, the legislative history indicates that the only reason for the change was to include aliens within the reach of the statute.

While generally, the term "person" is construed to include corporations, the legislative history in this case leads the court to conclude that Congress did not intend to permit indigent corporations to proceed *in forma pauperis*. The majority of other courts which have addressed this issue share this view. See *Sears Roebuck & Co. v. C. W. Sears Real Estate Inc.*, 686 F.Supp. 385 (N.D.N.Y. 1988); *Move Organization v. United States Dept. of Justice*, 555 F.Supp. 684, 690-92 (E.D. Pa. 1983); *Honolulu Lumber Co. v. American Factors, Ltd.*, 265 F.Supp. 578 (D. Haw 1966) *aff'd on other grounds*, 403 F.2d 49 (9th Cir. 1968).

Plaintiff relies upon the unpublished opinion in *The Nationalist Movement v. City of Natchez, Mississippi*, No. W880033(B), S.D.Miss., June 30, 1988. The order cited by plaintiff deals largely with the issue of attorneys fees and mentions *in forma pauperis* status only in passing. During the course of that action, a magistrate granted the plaintiff's motion to proceed *in forma pauperis* and plaintiff attempted to recover attorney's fees for prevailing on that issue. Defendants objected, claiming that the magistrate's decision was in error. The district judge simply noted that it was not clear that the magistrate had erred and, in any event, the defendants had not objected to the magistrate's decision within ten days.

The *Natchez* decision contained no discussion of the *FDM Manufacturing* case. Thus, this court presumes that the decision was not brought to the district court's attention, for if it had been, the district court would have been

bound by it. In any event, the Mississippi court did not address the issue since the parties had not filed timely objections to the magistrate's order.

Plaintiff also relies upon *Allen Russell Publishing, Inc. v. Levy*, 109 F.R.D. 315 (N.D.Ill. 1985). In that case, however, there was no request by the corporation to proceed *in forma pauperis* and the court merely mentioned in passing that it did not know how it would rule if it had been confronted with the issue. Thus, the case has no precedential value.

Finally, plaintiff refers the court to *Harlem Rivers Consumers Cooperative, Inc. v. Associated Grocers of Harlem, Inc.*, 71 F.R.D. 93 (S.D.N.Y. 1976), where the court allowed the non-profit corporation to proceed as a pauper. In *Harlem River*, however, the court found that the suit was an action brought "in the public interest", that the shareholders would not reap any personal financial benefit from the action, and that the shareholders or members were themselves indigent persons. Thus, the court noted that even if the corporate veil was pierced, the members would have met the statutory requirement of poverty.

The *Harlem Rivers* factors have not been shown to be present in the instant suit. More importantly, this court agrees with the majority of courts which have considered the issue and finds that Congress intended that only natural persons would be included within the reach of the statute. Accordingly, this court denied the application for leave to proceed *in forma pauperis*.¹

¹ After the court's ruling, counsel for plaintiff paid the filing fee, however, counsel indicated that he was paying the same under "protest."

City of Cumming Ordinance

Plaintiff originally applied for a permit to use the streets and roads of Cumming for a parade on the afternoon of January 21, 1989. The city granted the original request on the condition that the organization only use one lane of the two lane road, that the parade last no more than one hour, and that the participants keep moving and not stop on the streets around the courthouse square. Subsequently, plaintiff filed an "amended" application asking to march in the morning instead of the afternoon. The city denied this request based upon the city ordinance provision prohibiting parades on Saturday mornings.

Plaintiff contends that this is a blanket prohibition on parades; however, this court ruled that the ordinance is not an absolute prohibition, but merely regulates the time and manner of the activity. Moreover, there is absolutely no evidence that the regulation, which is content-neutral, is not applied evenhandedly to all groups. Accordingly, as is more fully set forth on the record, the court finds that the ordinance is reasonable, serves significant governmental interests, and does not unduly burden plaintiff's exercise of its, or its members', First Amendment rights.

Forsyth County Ordinance

The plaintiff also challenges the County's parade ordinance as constitutionally invalid on its face. At the outset, the court notes that a statute may be invalid on its face if it is "'unconstitutional in every conceivable application,' or it 'seeks to prohibit such a broad range of

protected conduct' that it is 'overbroad.' " *Clean-Up '84 v. Heinrich*, 759 F.2d 1511, 1513 (11th Cir. 1985) (citing *City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984)). Furthermore, a statute is "overbroad" for constitutional purposes when there is a realistic danger that it will significantly compromise recognized First Amendment protections of parties not before the court. *Id.* Furthermore, a statute may be overbroad if its terms are so sweeping that they create an unnecessary risk of chilling protected speech. *Secretary of State v. Joseph H. Munson Co.*, 467 U.S. 947, 967-68 (1984).

Pursuant to the county ordinance, Forsyth County imposed a \$100 fee upon the plaintiff as a condition of receiving a permit for the January 21, 1989 parade. Sections 3(6) of this ordinance provides as follows:

(6) Every private organization or group of private persons required to procure a permit under the provisions of this Ordinance shall pay in advance for such permit, for the use of the County, a sum not more than \$1,000.00 for each day such parade, procession, or open air public meeting shall take place. *The Administrator shall adjust the amount paid in order to meet the expense incident to the Administration of the Ordinance and to the maintenance of public order in the matter licensed.* In no event shall the Administrator calculate the amount of the permit fee by considering said fee as a revenue tax. (emphasis added)

Restraints against free speech in traditional public forums are proper only when they are valid time, place and manner restrictions which are content neutral, narrowly tailored to serve significant governmental interests, and leave open ample alternative channels of communication. *United States v. Grace*, 461 U.S. 171 (1983). On the

issue of whether permit fees impose an unconstitutional burden, the Supreme Court in *Cox v. New Hampshire*, 312 U.S. 569, 576 (1941), reasoned that such charges, as distinguished from taxes, can be appropriate when carefully set to meet the costs incident to processing the application and maintaining public order at the assembly.

This Circuit, however, has subsequently construed *Cox* to preclude the levying of charges for the cost of additional policemen occasioned by a demonstration. See *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1523 (11th Cir. 1985), cert. denied, 475 U.S. 1120 (1986). The ordinance in *Walsh* vested unfettered discretion in the chief of police to determine the additional police force which might be necessary to protect public order. *Id.* Concluding that the potential for content-based discrimination was inevitable, the *Walsh* court struck the ordinance as facially unconstitutional. *Id.* at 1526.

The undisputed facts developed at the hearing reveal that Donald Major, the Forsyth County Administrator with authority to grant parade permits, based his decision to charge a \$100 fee solely on the efforts he expended researching the plaintiff's application, and not on the potential cost of attendant police protection which might be occasioned by the parade. Like the ordinance in *Walsh*, the instant ordinance vests much discretion in the County Administrator in determining an appropriate fee. However, unlike the *Walsh* ordinance, insofar as the County Administrator charges a fee for the costs of investigating the application, the constitutional concerns of *Walsh* dissipate. This is because the determination of the fee under those circumstances is based solely upon content-neutral criteria; namely, the actual costs incurred investigating

and processing the application, regardless of the nature of the applicant's proposed assembly.

The court notes that the instant ordinance alternatively permits fees to be assessed based upon "the expense incident to . . . the maintenance of public order." If the county had applied this portion of the statute, the phrase might run afoul of the constitutional concerns raised by the Eleventh Circuit in *Walsh*. Thus, in the appropriate case, a court might be required to strike the portion of the statute which permits fees to be assessed based upon the costs incident to maintaining public order. *See Gooding v. Wilson*, 405 U.S. 518, 520-21 (1972); *Dombrowski v. Pfister*, 380 U.S. 479, 490-91 (1965) (holding that a narrowing construction is appropriate when readily apparent).

However, in the instant case, plaintiff did not base their argument upon this phrase, but contended that the mere fact that a \$100 fee was imposed is unconstitutional, especially in light of the organization's financial circumstances. The evidence was clear that the fee was based solely upon the costs of processing the application and plaintiff produced no evidence to the contrary. The court need not reach constitutional issues which are not squarely before it. Accordingly, the court finds that the county ordinance, as applied in this case, is not unconstitutional.

Forsyth County School Board Permit

Plaintiff initially requested that the Forsyth County School Board allow plaintiff's members to use the high school parking lot for parking and to assemble for the parade from the high school to downtown Cumming. The

school board gave plaintiff permission to use the parking lot for this purpose on the condition that plaintiff obtain any required permits, pay any required fees to the appropriate city and county entities, that plaintiffs do not damage or litter the grounds, and that the function not interfere with any planned school functions.

By letter dated January 4, 1989, the school board reiterated these conditions. However, when plaintiffs learned that the city may not allow them to march in the morning, they requested that they be allowed to use the school lot for the entire event, including the actual rally. The school board denied this alternative request on the ground that the school gym is to be used for a basketball tournament the entire day and plaintiff's rally would be disruptive and incompatible with a community sporting event. The local attorney for the School Board testified that the Board's decision was not based upon the content of the proposed speech.

Since the court has upheld both the city and county ordinances, the court finds that the school board properly conditioned use of the parking lot on compliance with city and county regulations. In addition, the court finds that the school board's refusal to permit plaintiff to hold a rally on school grounds does not violate plaintiff's First Amendment rights.

First, testimony at trial showed that a basketball tournament had been previously scheduled to take place from 9:00 a.m. through 4:00 p.m. on January 21, 1989. The participants in the tournament will be boys aged 11 and 12 who will most likely be accompanied by their families and young friends. Numerous games are scheduled to

take place all day long and the participants will most likely be going to and from the school building throughout the day. To reach the gym, the players and their fans will have to go through the parking lot where plaintiffs wish to hold a rally. Plaintiff has estimated that approximately 200 persons will attend the rally.

The question is "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." *Grayned v. City of Rockford*, 408 U.S. 104 (1972). The court finds that use of the parking lot for a rally is incompatible with the previously planned use of the school gym for a basketball tournament.

Plaintiff and its "affiliate", the Forsyth County Defense League, have held previous rallies in Cumming and the Atlanta metropolitan area. The court has observed that plaintiff's rallies and marches are often loud and attract boisterous and sometimes violent "counter-demonstrators." In addition, due to the number of people anticipated to take part in the January 21, 1989 rally, there is a great likelihood for confusion and that the previously scheduled activity or normal school activities will be interrupted.

Where there are "conflicting demands for use of the same place", the state may be compelled "to make choices among competing users and uses. And the State may have a legitimate interest in prohibiting some [uses] to protect public order." *Police Department of Chicago v. Mosley*, 408 U.S. 92, 98 (1972). Here, there was no evidence that the school board based its decision on the content of plaintiff's speech. Indeed, the board has given

permission for plaintiff's members to park their cars in the lot and to assemble for the parade. However, the potential for noise and violence is great and the court finds that the school board's refusal to allow plaintiff to hold a rally in the school parking lot is reasonable.

Accordingly, the plaintiff's motion for a temporary restraining order is denied in all respects.

Inasmuch as this order, *inter alia*, takes action involving the conduct of attorney Richard Barrett, it is directed that a copy of the order be sent to the State Bar of Georgia, Office of Bar Admissions.

IT IS SO ORDERED this 23rd day of January, 1989.

/s/ William C. O'Kelley
 WILLIAM C. O'KELLEY
 United States District Judge

APPENDIX B

The NATIONALIST MOVEMENT, a Mississippi non-profit corporation incorporated in Georgia, Plaintiff-Appellant,

v.

The CITY OF CUMMING, FORSYTH COUNTY, GEORGIA, Forsyth County Board of Education, Defendants-Appellees.

No. 89-8417.

United States Court of Appeals,
Eleventh Circuit.

Oct. 2, 1990.

Appeal from the United States District Court for the Northern District of Georgia.

Before FAY and COX, Circuit Judges, and GODBOLD, Senior Circuit Judge.

GODBOLD, Senior Circuit Judge:

This case arose out of the efforts of a group called the Nationalist Movement to conduct a parade and rally in Cumming, Forsyth County, Georgia, in January 1989. The Movement had held a parade and rally in Cumming in January 1988 to express its opposition to the federal holiday commemorating the birthday of Dr. Martin Luther King, Jr. It wished to hold a similar parade and rally on January 21, 1989, the date of the King holiday, in order to again express its opposition.

To carry out its plan the Movement applied for permits from three distinct public bodies: the City of Cumming, Forsyth County, and the Forsyth County Board of Education. During months of negotiations the details of

the proposed event changed from time to time, and several amendments, suggestions, and alternatives were considered, but the major thrust of the plan ran this way: the Movement proposed that participants assemble on the grounds of the Forsyth County High School in Cumming, march along a public street to the county courthouse square, and there conduct a rally and speeches for one and a half to two hours. When the rally ended participants were to march back along the same route to the high school and disperse.

Initially the events were planned for Saturday afternoon, January 21. The Movement applied to the Superintendent of Education for permission to assemble on the high school grounds. It applied to the City Administrator for a permit to parade along a designated street, going to and coming from the courthouse square, and it applied to the County Administrator for a permit to conduct a rally on the courthouse steps.

The Movement was not successful in securing permits on terms and conditions agreeable to it. After an initial denial (until the Movement could show that it had an assembly point for the rally off the right of way of the street, the City Commission granted a parade permit for a parade to commence at 1:00 p.m. on Saturday, January 21, from the high school, to proceed to the courthouse, and to return. The City refused to close all traffic on the street during the parade and limited the Movement to the use of only one lane of the two-lane street.

After receiving this authorization, the Movement decided to change the time of its event in Cumming. It scheduled a rally in Atlanta for the afternoon of January

21 and received authorization from the City of Atlanta to conduct it. The Movement then sought to shift events in Cumming to Saturday morning, beginning at 9:00 a.m., planning to inform participants there of the Atlanta events and to urge them to attend. The City declined to change the authorized parade time because of the following provision of the City Parade and Assembly Ordinance.

[N]o private organization or group of private persons may use the roads immediately adjacent to and those roads which lead directly to the Forsyth County Courthouse grounds for private purposes of holding a parade, assembly, demonstration, or other similar activity on any non-holiday weekday prior to 8:00 a.m. or after 5:00 p.m. or on any Saturday, Sunday, or public holiday prior to 1:00 p.m. or after 5:00 p.m.

City Amended Parade and Assembly Ordinance, § 6(g) (emphasis added).¹

On December 30, 1988, the County approved the Movement's application for a rally on the courthouse steps and grounds lasting from about 8:00 a.m. to 11:00 a.m. on January 21, subject to the payment of a \$100 application fee. A few days later, the Board of Education

¹ This provision was enacted as part of an Amended Ordinance adopted October 1, 1987. Interpretation of this language at the hearing in a dialogue between the court and counsel for the City, Rec. III, at pp. 208-209, proved somewhat murky. But the "Saturday morning ban," which limits a parade on the streets on a Saturday to the hours between 1:00 p.m. and 5:00 p.m. is clear.

gave its consent for the participants to assemble on January 21 at the high school, conditioned first upon the Movement's obtaining permission from the City and County to conduct its parade and assembly and, second, on the requirement that the premises not be damaged or littered.

While continuing to negotiate with the City about the timing of the event, the Movement discussed with a lawyer for the Board of Education an alternative authorization to use the high school parking lot for its rally and speeches in the event the parade and the rally at the courthouse were "interfered with." It is uncertain whether this request was ever presented to the Board or was merely discussed with its counsel, but, in any event, approval to conduct a rally and speeches on school grounds was not given.

On January 19 the Movement filed suit in the district court for the Northern District of Georgia seeking a temporary restraining order, temporary and permanent injunction, compensatory and punitive damages, and attorney fees. On this same day the district court conducted a hearing on the request for a TRO. On January 23 it entered a written order denying the request. Two days later, January 25, the court entered a final judgment dismissing the case on the merits.

I. The City

The Movement contends that the section of the City's parade ordinance that bans parades and assemblies on Saturday mornings on streets adjacent to, or leading to, the county courthouse, violates the First Amendment on

its face and as applied. Indisputably the proposed parade involves First Amendment activity. Also beyond dispute is the fact that this ordinance regulates such activity within a traditional public forum, indeed, "the archetype of a traditional public forum," public streets. *Frisby v. Schultz*, 487 U.S. 474, 480-81, 108 S.Ct. 2495, 2499-2500, 101 L.Ed.2d 420 (1988). See *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 954, 74 L.Ed.2d 794 (1983); *Hague v. CIO*, 307 U.S. 496, 515, 59 S.Ct. 954, 963, 83 L.Ed. 1423 (1939) (Roberts, J., joined by Hughes, C.J., and Black, J.). Our method of determining the constitutionality of the ordinance depends initially on whether it regulates expressive activity on the basis of content. If the restriction is based on the content of the expression, then the ordinance must be "necessary to serve a compelling state interest and . . . narrowly drawn to achieve that end." *Perry*, 460 U.S. at 45, 103 S.Ct. at 954. If the ordinance is content-neutral, then it must be "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Id.*

The district court determined that § 6(g) of the parade ordinance was content-neutral. Although this section was enacted in the wake of previous demonstrations by the plaintiff and its affiliated organizations in Cumming, the ordinance on its face clearly does not discriminate among paraders on the content of their proposed expressive activities. The Movement nonetheless contends that the City's refusal to allow it to hold its activities in the morning was motivated by disagreement with the Movement's message. This contention is refuted by the simple fact that the City granted the Movement's

earlier request to conduct a parade in the afternoon. The district court's determination is correct.

Thus the City's burden is to establish that its ordinance furthers significant municipal interests, that its restrictions are narrowly tailored to achieve those interests, and that those wishing to engage in expressive activity in Cumming have ample alternative means of doing so. See *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 n. 5, 104 S.Ct. 3065, 3069 n. 5, 82 L.Ed.2d 221 (1984) (once plaintiff demonstrates that First Amendment applies, the government bears burden of justifying impairments on protected activity); *id.*, at 309, 104 S.Ct. at 3077 (Marshall, J., joined by Brennan, J., dissenting) ("The First Amendment requires the Government to justify *every* instance of abridgement.") (emphasis in original). Unfortunately, because of the manner in which the hearing on the TRO request developed, the City did not have an opportunity to offer evidence to sustain this burden. After the plaintiff rested, a dialogue followed between court and counsel for all parties. Before permitting the City to present evidence, the court stated from the bench that the City "for some reason" had made a determination that Saturday morning parades were undesirable, that this ban was applied evenhandedly, and that the Movement had alternative means of conducting a parade since Saturday afternoon was available. The court then dismissed the suit against the City. Rec. III, p. 127. The County and the Board of Education then put on

evidence, but the City did not in light of the Court's oral ruling.²

We cannot affirm the judgment in favor of the City on the basis of the record before us. Although the City identified some of the governmental interests to be served by the ordinance in its preamble, which we set out in the margin, the record contains no evidence showing how those interests were advanced by a Saturday morning ban on parades and rallies.³ The City must

² In its subsequent written order the district court held that the ordinance was not an absolute prohibition on speech but merely regulated the time and manner of the activity, that it was content-neutral, and that there was no evidence it was not applied evenhandedly to all groups. Accordingly, the court found that the ordinance was reasonable, served significant government interests, and did not unduly burden the First Amendment rights of the Movement or its members.

³ The recitals of findings and purposes contained in an ordinance's preamble can serve to identify governmental interests for the purposes of this analysis. See *Frisby v. Schultz* 487 U.S. 474, 477, 484, 108 S.Ct. 2495, 2498, 2502, 101 L.Ed.2d 420 (1988). Indeed, such recitals may well be entitled to greater weight in identification of governmental interests than post hoc articulations by counsel in judicial proceedings. The City of Cumming set out the following findings in the preamble of its Parade Ordinance.

WHEREAS the General Assembly of the State of Georgia has delegated the police powers of the State of Georgia to the City of Cumming, Georgia, with respect to persons and property situated within the municipal limits of the City of Cumming, Georgia, and expressly authorized and empowered said

(Continued on following page)

demonstrate the logical and practical relationship between the restriction and these interests, so that the

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Mayor and Council of the City of Cumming, Georgia, to make such rules and regulations with respect to persons or property and all other things affecting the good government of the City as it shall deem requisite and proper for the security, welfare, health, safety, and convenience of the City and for the preservation of the peace and good order of same; and

WHEREAS private organizations and groups of private persons have from time to time sought to use public property and public roads within the jurisdiction of the City of Cumming, Georgia, for private purposes; and

WHEREAS such uses have included parades, assemblies, demonstrations, road closings, and other related activities; and

WHEREAS it is in the public interest that such uses not interfere unduly with the rights of citizens not participating therein nor endanger the public safety nor obstruct the orderly flow of traffic; and

WHEREAS it is right and proper for the security, welfare, health, and convenience of the citizens of the City of Cumming, Georgia, and for the preservation of the peace and good order of said City that rules and regulations relating to parades, assemblies, demonstrations, road closings, and other related activities within the city limits of the city of Cumming, Georgia, be established and that violations of said rules and regulations be punishable in the police court of Cumming as provided by laws; and

WHEREAS the City of Cumming's Administrator shall be empowered to designate reasonable sites

(Continued on following page)

court may determine whether the restriction is substantially broader than is necessary to achieve those ends. See

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and set reasonable time schedules for the beginning and end of parades, assemblies, demonstrations, road closings, and other related activities where more than one is applied for or where the proposed activity interferes with the public safety or obstructs the orderly flow of traffic; and

WHEREAS the City Administrator should be empowered to cancel the permit for any parade, assembly, demonstration, road closing, or other related activity where the participants fail to appear and begin within any reasonable time of the scheduled time based on other activities permitted or based on the unreasonable interference with the public welfare, peace, safety, health, good order, and convenience to the general public; and

WHEREAS the City Administrator should be empowered to coordinate all of his duties and decisions under this Ordinance with the official designated by the County of Forsyth charged with the same duties and decisions as to parades, assemblies, demonstrations, road closings, and other related activities; and

WHEREAS the Board of Commissioners of Forsyth County, Georgia, has amended its Ordinance to restrict interference with the administration of justice on the Forsyth County Courthouse grounds and to minimize the likelihood of interference with the rights of nonparticipating citizens residing in close proximity to the Forsyth County Courthouse; and

WHEREAS the Mayor and Council of the City of Cumming, Georgia, wish to maintain the free flow of

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Ward v. Rock Against Racism, ___ U.S. ___, 109 S.Ct. 2746, 2757-58, 105 L.Ed.2d 661 (1989); *Community for Creative Non-Violence v. Turner*, 893 F.2d 1387, 1391-92 (D.C.Cir. 1990). Requiring any lesser showing would render the "narrow tailoring" factor of the analysis nugatory.

Although the City has not carried its burden of justifying the challenged provision of its ordinance, it has not had a meaningful opportunity to do so. Therefore, we vacate the judgment as to the City and remand for further proceedings on the Movement's complaint against it. The Movement also challenged that aspect of the City's permit limiting the parade to one lane of the two-lane street that leads from the high school to the courthouse. This claim must also be remanded to the district court for further proceedings for the same reasons.⁴

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traffic on the roadways around and leading to the Forsyth County Courthouse grounds; and

WHEREAS the Board of Commissioners of Forsyth County, Georgia, have recently amended the County's Ordinance regarding this subject matter, making it advisable and necessary for the Mayor and Council to amend the City's Ordinance to maintain consistency within these respective jurisdictions;

...
⁴ The City informed the Movement by letter that it had granted the permit. After the statement that the parade is to commence at the high school, the letter contains this parenthetical sentence: "(You must obtain permission from school authorities to use their property for parking and assembling.)" We do not construe this sentence as a provision conditioning

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II. Forsyth County

The Movement attacked as facially unconstitutional the County ordinance providing for a permit fee of up to \$1,000 per day for each day that a parade or rally takes place.⁵

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the City's permit on Board of Education approval. Rather it appears to be merely a cautionary notice that the City permit does not cover parking or assembling on school property and that permission for those purposes must be obtained from school authorities. Even if this sentence is a formal condition on the City's permit, it amounts to no more than a reasonable decision to hold the Movement to the terms of its application. See discussion in section III. of text, *infra*.

⁵ Sections 6 and 7 of the Amended County Ordinance, No. 34, provide:

(6) Every private organization or group of private persons required to procure a permit under the provisions of this Ordinance shall pay in advance for such permit, for the use of the County, a sum not more than \$1,000.00 for each day such parade, procession, or open air public meeting shall take place. The administrator shall adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed. In no event shall the Administrator calculate the amount of the permit fee by considering said fee as a revenue tax.

(7) If the private organization be other than individuals, a permit will not issue without the paying of the necessary fee; individuals may be excused from such a deposit on account of indigence upon the execution under oath, by each individual in the group applying for the permit, of a pauper's affidavit. Prior to the receipt of such an affidavit the Administrator shall advise the applicant orally or in writing of the penalties for the execution of a false document.

The crucial concern here is the extent of the right of the public to use the city streets and parks, which the Supreme Court has regarded as quintessential public forums, to exercise First Amendment activity, without the imposition of pecuniary burdens which allegedly go beyond a municipality's concern of legitimate interests.

Central Florida Nuclear Freeze Campaign v. Walsh, 774 F.2d 1515, 1521 (11th Cir. 1985), cert. denied, 475 U.S. 1120, 106 S.Ct. 1637, 90 L.Ed.2d 183 (1986). In *Central Florida* we considered the constitutionality of an Orlando, Florida ordinance that authorized the Chief of Police to charge persons exercising First Amendment rights the full cost of additional police protection, as a condition to the granting of a permit. We held:

Although license fees are proper for the costs of administering an event, under the Supreme Court's decision in *Cox v. New Hampshire* [312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941)], we read *Cox* as authorizing only nominal charges for the use of city streets and parks to further First Amendment activities. An ordinance which charges more than a nominal fee for using public forums for public issue speech, violates the First Amendment. We, therefore, hold that the Orlando City Ordinance 18A.12 which requires persons wishing to use city streets and parks to demonstrate, to prepay an amount of costs for additional police protection determined by the discretion of the chief of police is unconstitutional.

Id. at 1523.⁶ In the present case the district court recognized that the Forsyth County Administrator, like the Orlando Chief of Police, had great discretion in determining an appropriate fee and held that, under the evidence, the Administrator exercised that discretion by charging for the costs of investigating and processing the application. There was no element of charge for the potential cost of additional police protection or for maintaining public order, and the determination of the fee was based solely upon content-neutral criteria.⁷ These distinctions addressed the methodology described in *Central Florida* for determining a fee. But the First Amendment imposes limitations on the size of a fee apart from the permissible components of it. To repeat, "we read *Cox* as authorizing only nominal charges for the use of city streets and parks

⁶ Our interpretation of *Cox* was aided substantially by the latter case of *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943), as well as by more recent Supreme Court cases involving traditional public forums. *Central Florida*, 774 F.2d at 1522. Concurring on other grounds, Judge Henderson disagreed with the majority's reading of *Cox*. *Id.* at 1527-28 (Henderson, J., concurring); see also *Kaplan v. County of Los Angeles*, 894 F.2d 1076, 1081 (9th Cir.), cert. denied, ___ U.S. ___, 110 S.Ct. 2590, 110 L.Ed.2d 271 (1990). We have reviewed Supreme Court cases involving public forums decided since *Central Florida*, and find no basis on which to reevaluate its ruling. See, e.g., *Smith v. Duff and Phelps, Inc.*, 891 F.2d 1567, 1570 (11th Cir.1990) (previous decision of this circuit is binding on subsequent panel, unless overruled by the circuit court sitting en banc, or called into question by change in Supreme Court precedent).

⁷ The court expressed doubt about the constitutionality of the portion of the ordinance that permits fees to be based upon the costs incident to maintaining public order but considered that issue not squarely before it.

to further First Amendment activities. An ordinance which charges more than a nominal fee for using public forums for public issue speech, violates the First Amendment." 774 F.2d at 1523.⁸ It is not necessary that we stake out the outer limits of a "nominal" charge.⁹ It is enough to hold, as we do, that the Forsyth County provision for a permit fee of up to \$1,000 for each day that a parade or rally takes place exceeds the constitutional requirement that such a charge be at most nominal.¹⁰

⁸ Given our conclusion that the ordinance is facially unconstitutional, we need not address the Movement's arguments concerning the section of the ordinance that exempts certain persons from payment of fees on the basis of their ability to pay. See *Central Florida*, 774 F.2d at 1523-24. At the January 19 hearing counsel for the County attempted to explain the operation of the exemption provision. Despite the attempt, this provision appears to be virtually incomprehensible, at least in its application to corporate applicants like the Movement.

⁹ *Central Florida* concerned costs that would arise from furnishing police protection for an event to occur on a non-workday by using off-duty officers who would be paid time and a half. The Movement contends that assessing a fee for administering a speech event cannot be based, as it was here, upon usual duties performed by regular employees during regular duty hours. We need not decide this issue.

¹⁰ The Movement also challenged the county's imposition of a \$100 permit fee on it as an unconstitutional application. Because we hold that the ordinance is facially unconstitutional we do not need to inquire whether the particular imposition of a fee of \$100 is unconstitutional.

III. The Board of Education

The Board of Education granted the Movement permission to assemble on the high school grounds without limitation as to morning or afternoon and without imposition of a permit fee. Nevertheless the Movement contends that its First Amendment rights were violated because the Board conditioned the permit on approval by the City and County of the Movement's parade and rally applications. In its formal application the Movement requested permission only to use the school parking lot as a base from which to assemble, to immediately depart while conducting its other activities, and to return three hours later and disassemble. The participants in the event would thus be on school grounds only a short time prior to the parade and another short time after it. It was also evident in the permit application that the parade and rally would take place well off school grounds. These circumstances were clearly important factors for the Board to consider, since another event, a junior high school basketball tournament, was scheduled to take place on school facilities during the morning and afternoon of the same day as the rally. Thus, the Board's stated "conditions" are no more than restatements of the premises of the plaintiff's application to it. In granting the permit, the Board gave the Movement precisely the authority requested. The Movement's argument that in doing so the Board somehow violated the First Amendment is both ironic and meritless.

Shortly before the date of the King holiday, after arrangements with the City had failed, the Movement requested approval in discussions with the Board's legal counsel to conduct its rally and speeches in the school

parking lot. The Board denied this request on the ground that such a rally would disrupt the previously scheduled basketball tournament.¹¹ The Movement conceded at the TRO hearing that the school parking lot was not a traditional public forum. The district court noted that the record contained no evidence that the Board of Education had expressly designated this parking lot as an area for speech activity. See *Perry*, 460 U.S. at 45, 103 S.Ct. at 954; see also *United States v. Kokinda*, ___ U.S. ___, 110 S.Ct. 3115, 3121, 111 L.Ed.2d 571 (1990) (plurality opinion) (government does not dedicate an area as a public forum by permitting limited discourse there but only by intentionally opening it for general public discourse) (citing *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 802, 105 S.Ct. 3439, 3449, 87 L.Ed.2d 567 (1985)). Thus, the Board "may reserve the [parking lot] for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry*, 460 U.S. at 46, 103 S.Ct. at 955. The record demonstrates amply that the Board denied the Movement's request on the basis of its judgment that the plaintiff's assembly was incompatible with the other events taking place at the school that day, not out of disagreement with the Movement's viewpoint. The Board's action was reasonable and did not violate the First Amendment rights of the plaintiff.

¹¹ The record is unclear on the issue of whether the Board of Education actually considered the Movement's request to conduct a rally in the parking lot. We assume for purposes of analysis of this that the Board denied the request.

IV. Evidentiary rulings

In an effort to introduce purported business records of the Movement, its attorney Richard Barrett (who is also its chief executive officer), "appointed" an available member of the organization, Dennis Wheeler, as "acting secretary" on the morning of January 19 and called him at the hearing later that day as a witness to authenticate the records. The witness had no knowledge of the records, could not identify them, and had never seen them until presented them by the attorney that morning. The district court granted defendants' motions to strike the testimony of this witness; therefore, Wheeler was unable to authenticate the records. The court did not err in this ruling. *See Fed.R.Evid. 602.*¹²

The court did not err in taking judicial notice that it had "observed that plaintiff's rallies and marches are often loud and attract boisterous and sometimes violent counter-demonstrators," and that "the potential for noise and violence is great." There had been two previous marches in recent years in Cumming by the Movement, or by what it called its "local affiliate," which it described as operating within the Movement's "corporate umbrella

or corporate protection." The marches and counter-marches in the county had been the subject of national publicity and attention and had implicated sharp racial tensions. At least two federal cases involving these prior events had occurred in the same judicial district as the present case, each with considerable fanfare. The district judge's observations were apparently based on local and national media accounts, as well as on public records. Moreover, these facts were generally known within the Cumming and Atlanta areas. Thus, they were proper subjects of judicial notice. *See Fed.R.Evid. 201(b); Gilmore v. City of Montgomery*, 417 U.S. 556, 567, 94 S.Ct. 2416, 2423, 41 L.Ed.2d 304 (1974); *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1304 (11th Cir.1988); *Kinnett Dairies, Inc. v. Farrow*, 580 F.2d 1260, 1278 n. 33 (5th Cir.1978); *see also Holland v. Wilson*, 737 F.Supp. 82, 84 (M.D.Ala. 1989) (noting violence attending those prior rallies). In any event, the Movement did not request a hearing before the district court on this issue pursuant to Fed.R.Evid. 201(e). *See Norman*, 836 F.2d at 1304 (failure to move for hearing renders issue non-appealable).

V. Rulings Relating to *Pro Hac Vice* Status

At the hearing held on January 19, the district court allowed Barrett to appear in the case *pro hac vice* for the Movement. As the hearing proceeded, however, the district judge made known his ethical concerns about several actions by Barrett, including: presenting Wheeler as a witness to authenticate corporate documents, which the court described as an attempt to create a fraud on the court; making frivolous objections based on an alleged

¹² The Plaintiff argues at length on appeal that the district court erred in refusing to introduce into evidence correspondence and other documents proffered while this witness was on the stand. The argument has no merit. The district court later construed most, if not all, of these documents, as part of the record after counsel for the defendants stipulated to their authenticity. *See* Rec. III, pp. 98-102.

attorney-client privilege to prevent the truth from emerging about Wheeler's lack of qualifications to testify; concealing from the court his personal interest in the litigation as the proposed Movement speaker in Forsyth County; and asking an adverse witness whether he was a veteran, in an effort to embarrass and disparage him.¹³ The judge made clear that these matters raised serious issues about Barrett's compliance with professional ethical standards and stated that he was considering the possibility of sanctions under Fed.R.Civ.P. 11. He announced from the bench:

I'm going to permit you to conclude this case. You've started it; I'm going to permit you to conclude it. I may or may not ultimately rule upon it based upon the issue that has been raised, but we're in the middle of it. I'm going to have it concluded. The matter's not over. So, if you've got any other evidence to present, present it. Let's get on with it.

Rec. III, p. 94.

¹³ On the issue of Barrett's interest in the litigation, the Movement contends that the district judge violated Fed.R.Evid. 201 by taking judicial notice of Barrett's activity in the prior demonstrations in Cumming. During the TRO hearing, the judge stated, "It is clear to the court at this time . . . that you're more than an attorney in this case; you are an active participant and party. I became convinced of that when I saw the news broadcast and saw you standing on the back of a pickup truck with a bullhorn whipping up the crowds in Forsyth County in the parade . . ." Rec. III, p. 93. We need not determine whether this observation falls within the category of facts of which a court may take judicial notice under Rule 201(b)(2), since the Movement did not move for a hearing on it under Rule 201(e). *See Norman*, 836 F.2d at 1304.

In its written order of January 23 denying a TRO the court addressed at length Barrett's conduct and concluded that Barrett "is hereby on notice that the court will not grant any future applications to appear *pro hac vice* due to the misconduct which occurred during the hearing in this action." The Movement filed a motion to reconsider this ruling, in which Barrett requested a hearing and an opportunity to respond. On April 25 the court denied this request for a hearing on the grounds that it had informed Barrett of its concerns at the January 19 hearing, and that Barrett had an opportunity to respond to them then. Its order said:

During the hearing, the court warned counsel that it considered counsel's actions to be improper and that the court would consider Rule 11 sanctions and would probably not allow counsel to appear *pro hac vice* again. 82-84, 94. However, for expediency, counsel was allowed to complete the hearing. . . .

. . . Nevertheless, the court will reconsider its ruling to the extent that the denial of *pro hac vice* applies prospectively. The court hereby amends its previous ruling as follows:

Counsel for plaintiff's authority to appear *pro hac vice* is hereby revoked for purposes of this case only. In future cases before this court, counsel may apply for leave to appear *pro hac vice* and the court will consider such applications on a case by case basis.

Accordingly, the motion for reconsideration is granted to the extent that the court has

modified its order as set forth immediately above. The motion is denied in all other respects.

Rec. II, Document 20, pp. 3-9 (footnote omitted).

We are unsure what the court intended by these rulings on Barrett's *pro hac vice* status. We believe the matter can be best laid to rest on remand by the district court's clarifying its intentions and by our stating at this time the governing principles that then would be applicable.¹⁴

If the court intended that Barrett would be permitted to "conclude this case," then Barrett has suffered no deprivation. He can finish the present case but, as set out in the April 25 order quoted above, in any future case he must apply for *pro hac vice* status. This is what he would be required to do anyhow. *Pro hac vice* status is for a case, or for a described matter within a case, and is not a continuing authorization.

On the other hand, if on remand the district court clarifies its orders by stating that it intended to revoke, and has revoked, Barrett's authority to appear in this case beyond the TRO hearing, we hold that Barrett's objections to revocation by the district court are not well taken. The preliminary legal issue presented is whether the district court satisfied procedural constraints on its authority to revoke *pro hac vice* status. In *Kirkland v. National Mortgage Network, Inc.*, 884 F.2d 1367 (11th Cir.1989), the Eleventh Circuit declared that when a court

¹⁴ We address these issues in the interest of efficiency and expedition. We do not, by addressing them, imply or even hint at what the district court's position should be on remand.

admits an attorney *pro hac vice*, it may not later revoke this status without notice of the charges against him and an opportunity to explain. *Id.* at 1371-72 (citing *Kleiner v. First National Bank of Atlanta*, 751 F.2d 1193, 1211 (11th Cir.1985)). Barrett contends that the district court did not provide him these notice and hearing rights. We disagree. A separate hearing on this issue is not necessary in every case. *Johnson v. Trueblood*, 629 F.2d 302, 304 (3rd Cir. 1980), cited in *Kirkland*, 884 F.2d at 1372 n. 12. In this case the district court put Barrett on clear notice of its concerns during the course of the January 19 hearing and allowed him an opportunity to explain his actions there.¹⁵ Moreover, since the conduct forming the factual basis of the court's ruling occurred in court before the district judge, a separate hearing was not necessary for factfinding purposes.

The district judge's findings of fact on the revocation issue are reviewed on a clearly erroneous standard. *Norton v. Tallahassee Memorial Hospital*, 700 F.2d 617, 619 (11th Cir.1983). We give great regard to the district court's findings supporting its decision in this case, including those bearing on Barrett's motivations and state of mind, since those findings are based on the judge's "observation of witnesses, [and] his superior opportunity to get 'the feel of the case.' " *Id.* (quoting *Noonan v. Cunard Steamship Co.*, 375 F.2d 69, 71 (2d Cir.1967) (Friendly, J.)).

¹⁵ These facts readily distinguish this case from the situations in *Kleiner* and *Kirkland*, where the disqualified attorneys were given no notice of the factual concerns of the court before disqualification. See *Kirkland*, 884 F.2d at 1369, 1372 n. 13; *Kleiner*, 751 F.2d at 1199, 1210-11.

In particular, the evidence fully supports the finding that Barrett's examination of witness Wheeler as an "acting secretary" of the Movement was an effort to commit a fraud on the court. Even the cold record demonstrates that Barrett attempted to establish a false appearance of Wheeler's competency to testify and to sponsor documents by giving him a manufactured title, when in reality Wheeler bore neither knowledge of nor responsibility over the subject matter. As this pretense unraveled under cross-examination, Barrett attempted to prevent discovery of the ruse through meritless objections, and later through leading questions on redirect examination.

Finally, we identify the appropriate standard by which to review a conclusion by the district court that revocation is warranted. "Cases applying the standards of the Code of Professional Responsibility to questions of attorney disqualification warrant full appellate review to ensure that there is consistency of treatment." *Norton*, 700 F.2d at 620. Similarly, where disqualification raises other substantial concerns such as a criminal defendant's rights under the Sixth Amendment, the district court's decision is subject to careful examination by the appellate court. *Id.* On the other hand, this case presents unique facts involving the integrity of the court system and respect for its participants within a courtroom proceeding. Under these circumstances, the district court must be accorded some discretion in monitoring its own processes. *Id.* at 619-20; *United States v. Dinitz*, 538 F.2d 1214, 1219 (5th Cir.1976) (en banc), *cert. denied*, 429 U.S. 1104, 97 S.Ct. 1133, 51 L.Ed.2d 556 (1977). With these principles in mind, we believe that if the district court ruled that Barrett's conduct at the January 19 hearing justified

revocation of his *pro hac vice* status, this ruling fell within the ambit of its appropriate discretion.

VI. Attorney Fees

The trial court granted the motions of the Board of Education and the City for attorney fees under 42 U.S.C. § 1988, and awarded \$4,700 to the City and \$1,840 to the Board, on the ground that the suit was frivolous, unreasonable and without foundation. *See, e.g., O'Neal v. DeKalb County*, 850 F.2d 653, 658 (11th Cir.1988). The conclusions that we have reached on the merits of the appeal require that the award of attorney fees in favor of the City be reversed. Although we have affirmed the district court on the merits with respect to the Board of Education, the factual and legal issues relating to the Movement's alternative request to use the school parking lot as the site for its rally and speeches, the Board's prior commitment for use of school premises for a basketball tournament, and the conflict between these events, were not frivolous matters for decision. Thus the award of attorney fees to the Board of Education must also be reversed. *Accord Acorn v. City of Phoenix*, 798 F.2d 1260, 1273 n. 15 (9th Cir.1986).

VII. Summary

Summarizing, the judgment dismissing the claims against the City is VACATED and these claims are REMANDED for further proceedings in which the City is entitled, if it wishes, to an opportunity to justify the challenged provisions of its ordinance. The judgment dismissing the claims against Forsyth County is REVERSED

and judgment shall be entered holding unconstitutional the provision of the County's ordinance providing for a fee of up to \$1,000 per day. The judgment dismissing the claims against the Board of Education is AFFIRMED. The rulings of the district court with respect to Barrett's *pro hac vice* status are REMANDED to the district court for further proceedings as described in this opinion. The judgment awarding attorney fees to the City and to the Board of Education is REVERSED.

FAY, Circuit Judge, concurring specially:

I concur in Judge Godbold's scholarly and thoughtful opinion but add one thought because of my concern that the law of our circuit has strayed from the precedents announced by the Supreme Court. Judge Henderson's separate concurrence in the *Central Florida* case, 774 F.2d at 1526, points out the error of reading *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941), and *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943), as prohibiting the assessment of fees based upon the cost of ensuring public safety and keeping the peace. As Judge Godbold points out, the *Central Florida* opinion is binding upon all of us until modified or overruled by our court sitting en banc. In my opinion, it may be time to do just that.

It simply makes no sense whatsoever to impose upon the public fisc all costs associated with policing rallies, parades or other functions planned by any number of organizations. As Judge Henderson pointed out, "[t]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Central Florida*, 774 F.2d at

1529 (Henderson, J., concurring) (quoting *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 101 S.Ct. 2559, 2564, 69 L.Ed.2d 298 (1981)). First amendment rights are not unlimited. Although these rights are precious, I fear we may have jumped too far too fast. A \$1,000 fee for the costs associated with processing the application and policing a parade and rally designed to use the city's main street and the county courthouse square for a period of one and a half to two hours strikes me as being extremely nominal.

As the Ninth Circuit recently stated:

Kaplan argues that *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) as interpreted by *Murdock v. Pennsylvania*, 319 U.S. 105, 116, 63 S.Ct. 870, 876, 87 L.Ed. 1292 (1943) allows only a nominal fee to gain access to a limited public forum. *Cox* approved a city-imposed fee of \$300 for the use of public streets for a parade by the Jehovah's Witnesses that was a reasonable estimate of the costs of policing the function. The *Murdock* case involved a license fee for home solicitation, unrelated to costs, that the Jehovah's Witnesses contended was a restriction on First Amendment rights. The Court distinguished the license fee from the requirement of a parade permit in *Cox*, noting that "the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors." This is not a statement that *only* nominal charges to defray expenses are constitutionally permissible, but rather noting the particular distinction between the facts in *Cox* and those in *Murdock*. We find nothing in *Cox* that requires that all

charges for any public forum be limited to "nominal" charges. For example, certainly reasonable rental charges can be made as a condition for granting the use of a municipal auditorium to any group on a nondiscriminatory basis.

In this circuit, we have recognized that it does not violate the First Amendment for a public entity to collect charges that fairly reflect costs incurred by the municipality in connection with an activity involving expression. *Baldwin v. Redwood City*, 540 F.2d 1360 (9th Cir.1976), *cert. denied sub nom. Leipzig v. Baldwin*, 431 U.S. 913, 97 S.Ct. 2173, 53 L.Ed.2d 223 (1977).

Kaplan v. County of Los Angeles, 894 F.2d 1076, 1081 (9th Cir.1990) (emphasis in original).

It seems to me that the position taken by the Ninth Circuit is both sound and in accord with Supreme Court pronouncements.

APPENDIX C

The NATIONALIST MOVEMENT, a Mississippi non-profit corporation incorporated in Georgia, Plaintiff-Appellant,

v.

The CITY OF CUMMING, FORSYTH COUNTY, GEORGIA, Forsyth County Board of Education, Defendants-Appellees.

No. 89-8417.

United States Court of Appeals,
Eleventh Circuit.

Dec. 18, 1990.

On Appeal from the United States District Court for the Northern District of Georgia, O'Kelley, District Judge, Presiding.

Before TJOFLAT, Chief Judge, FAY, KRAVITCH, JOHNSON, HATCHETT, ANDERSON, CLARK, COX, BIRCH AND DUBINA, Circuit Judges*.

ON PETITION FOR REHEARING AND SUGGESTION
FOR REHEARING EN BANC

(Opinion October 2, 1990, 11th Cir., 1990,
913 F.2d 885)

BY THE COURT:

A member of this court in active service having requested a poll on the application for rehearing en banc

* Judge Edmondson is recused and will not participate in this decision.

and a majority of the judges in this court in active service having voted in favor of granting a rehearing en banc,

IT IS ORDERED that the above cause shall be reheard by this court en banc without oral argument during the week of February 11, 1991. The clerk will specify a briefing schedule for the filing of en banc briefs. The previous panel's opinion is hereby VACATED.

APPENDIX D

The NATIONALIST MOVEMENT, a Mississippi non-profit corporation incorporated in Georgia, Plaintiff-Appellant,

v.

The CITY OF CUMMING, FORSYTH COUNTY, GEORGIA, Forsyth County Board of Education, Defendants-Appellees.

No. 89-8417.

**United States Court of Appeals,
Eleventh Circuit.**

July 5, 1991.

Appeal from the United States District Court for the Northern District of Georgia; William C. O'Kelley, Chief Judge.

Before TJOFLAT, Chief Judge, and FAY, KRAVITCH, JOHNSON, HATCHETT, ANDERSON, CLARK, EDMONDSON, COX, BIRCH and DUBINA, Circuit Judges, and GODBOLD*, Senior Circuit Judge.

PER CURIAM:

A panel of this court held facially unconstitutional the provision of the Forsyth County ordinance requiring advance payment of a fee of up to \$1,000 per day for a permit required of a private organization or group of private persons to conduct a parade or public meeting on the roads or other public property of the County. The

* Senior U.S. Circuit Judge John C. Godbold has elected to participate in further proceedings in this matter pursuant to 28 U.S.C.A. § 46(c).

Nationalist Movement v. The City of Cumming, Forsyth County, Georgia, Forsyth County Board of Education, 913 F.2d 885 (1990). The panel decision relied upon the holding of *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1521 (11th Cir. 1985), *cert. denied*, 475 U.S. 1120, 106 S.Ct. 1637, 90 L.Ed.2d 183 (1986), that only nominal charges are constitutionally authorized for the use of city streets and parks to further First Amendment activities and held that a fee of up to \$1,000 per day exceeded the constitutional requirement that such a charge be at most nominal. A majority of the active judges in regular active service ordered that the appeal be reheard by the court en banc in order that the court might consider whether the holding of *Central Florida* relied upon by the panel should be overruled. 921 F.2d 1125 (1990). That order vacated the panel opinion.

The court en banc, having considered the issue above described and having discussed and considered the panel opinion and the briefs of the parties, now reinstated the panel opinion in its entirety.

IT IS SO ORDERED.

TJOFLAT, Chief Judge, concurring in part and dissenting in part in which BIRCH, Circuit Judge, joins:

I respectfully dissent from the court's holding that the Forsyth County (the County) ordinance, pursuant to which the County Administrator (the Administrator) sought to charge the Nationalist Movement (the Movement), a corporation, a \$100 fee to assemble on the County courthouse steps, is facially invalid.¹ I believe

¹ I concur in the court's disposition of the Movement's claims against the County School Board and the City of Cumming.

that a facial challenge to the ordinance was inappropriate and that we should remand the case to the district court to determine whether the fee assessed here withstands constitutional scrutiny.²

In count two of its complaint, the Movement alleged that the County ordinance was ~~factually~~ invalid because it did not prescribe carefully tailored standards for the Administrator when he (1) reviews applications for permits and (2) sets permit fees. In count three – an as-applied challenge – the Movement contended that the Administrator's imposition of the \$100 fee on the Movement and his failure to waive that fee rendered the application of the ordinance to the Movement constitutionally infirm. Finally, in court four, the Movement alleged that the Administrator acted to suppress the Movement's speech because he disagreed with its content.³ Based on these allegations, the Movement sought a temporary restraining order and preliminary and permanent injunctions "enjoining [the County], [its] officers, agents, servants, employees, attorneys and those persons in

² Although the Movement sought to enjoin the County from interfering with the rally it scheduled for January 21, 1989, the passage of that date has not mooted the case. The Movement (or the Forsyth County Defense League – an independent affiliate of the Movement) had paraded in Forsyth County in 1986, 1987, and 1988, and presumably intends to parade in future years. Thus, the County's conduct is capable of repetition yet would evade review, see *Southern Pac. Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310 (1911), and so this court will hear the Movement's claim.

³ Count one involved charges against the City of Cumming.

active concert or participation with [it]⁴ from interfering in any way with [the Movement's] assembly . . . at the Forsyth County Courthouse between 8:00 AM and 11:00 AM, January 21, 1989."⁵ Specifically, it sought to enjoin the enforcement of a County Ordinance "prohibiting [it] from holding [a] rally without pre-paying a \$100.00 fee." The Movement also sought declaratory relief against the County that would prohibit the County from using sections 3(6) and 3(7)⁶ of the County ordinance "to impose

⁴ The Movement asked the court to enjoin these County personnel from enforcing the ordinance. The Movement did not, however, make any of those persons parties defendant in the lawsuit; it only named the County. Thus, any injunctive relief the Movement obtains must be directed solely against the County.

⁵ Despite this broad language, the Movement does not assert that no time, place, or manner restriction constitutionally can be placed on parades; rather, it contends that any fee - or any fee greater than a nominal fee - is unconstitutional.

⁶ Sections 3(6) and (7) of the ordinance provide:

(6) Every private organization or group of private persons required to procure a permit under the provisions of this Ordinance shall pay in advance for such permit, for the use of the County, a sum not more than \$1,000.00 for each day such parade, procession, or open air meeting shall take place. The Administrator shall adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed. In no event shall the Administrator calculate the amount of the permit fee by considering said fee as a revenue tax.

(Continued on following page)

unreasonable or excessive fees, or fees at all upon impudent nonprofit corporations." The Movement asked that the court declare these sections violative, on their face or as applied, of the Movement's constitutional rights of freedom of speech, association, and assembly.⁷

The district court rejected the Movement's facial challenge, concluding that the Administrator's discretion was properly circumscribed. It then held that the Administrator did not impose an unconstitutional fee in this case; specifically, the court found that the Administrator did not discriminate against the Movement based on the content of its speech. The panel opinion, which a majority of this en banc court reinstates, held, however, that the County ordinance's fee provision was facially invalid because it could result in the imposition of more than a

(Continued from previous page)

(7) If the private organization be other than individuals, a permit will not issue without the paying of the necessary fee; individuals may be excused from such a deposit on account of indigence upon the execution under oath, by each individual in the group applying for the permit, of a pauper's affidavit. Prior to the receipt of such an affidavit the Administrator shall advise the applicant orally or in writing of the penalties for the execution of a false document.

⁷ The parties and the court generally have treated the corporation as the first amendment proponent that wishes to exercise its first amendment rights, see *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 784, 98 S.Ct. 1407, 1420, 55 L.Ed.2d 707 (1978), i.e., the corporation, rather than individuals, genuinely is doing the speaking. For purposes of this opinion, I treat it similarly.

"nominal" fee, contrary to *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1521 (11th Cir.1985) (interpreting *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) and *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943)), cert. denied, 475 U.S. 1120, 106 S.Ct. 1637, 90 L.Ed.2d 183 (1986).

In this opinion, I first, in parts I.A and I.B, examine the overbreadth doctrine and its application to statutory licensing schemes. Then, in part I.C, I consider whether the County ordinance unconstitutionally delegated to the Administrator the authority to set a fee of up to \$1000, given that *Cox* sanctions only nominal fees on expressive activities. After discussing the relevant Supreme Court precedent, I conclude that the County ordinance adequately curtails the Administrator's discretion and hence survives facial scrutiny. Finally, in part II, I demonstrate that we should remand this case to the district court to determine whether the \$100 fee the Administrator charged the Movement is nominal in light of the Movement's financial resources and the administrative and public order expenses that necessarily would have been occasioned by its proposed assembly.

I.

A.

A litigant who makes a facial challenge to a statute ordinarily "must establish that no set of circumstances exist under which [the statute] would be valid. The fact that [the statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid. . . ." *United States v. Salerno*, 481

U.S. 739, 745, 107 S.Ct. 2095, 2100, 95 L.Ed.2d 697 (1987). In First Amendment cases, however, the Supreme Court has recognized that where a statute covers both protected and unprotected expressive or associational activities, a litigant who himself is engaged in unprotected activity may challenge the statute based on "[its] potential reach . . . , conceivable sets of circumstances, and possible direct and indirect burdens on speech." *American Booksellers v. Webb*, 919 F.2d 1493, 1499-500 (11th Cir.1990). This doctrine, known as the overbreadth doctrine, thus protects the public from the chilling effect that such a statute has on protected speech; the court will strike down the statute even though in the case before the court the governmental entity only enforced the statute against those engaged in unprotected activities. "It has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society," *Broadrick v. Oklahoma*, 413 U.S. 601, 611-12, 93 S.Ct. 2908, 2915, 37 L.Ed.2d 830 (1973); thus, when a statute "does not aim specifically at evils within the allowable area of [government] control, but . . . sweeps within its ambit other activities that in ordinary circumstances constitute an exercise" of protected expressive rights, a court may hold the law void on its face. See *Thornhill v. Alabama*, 310 U.S. 88, 97, 60 S.Ct. 736, 742, 84 L.Ed. 1093 (1940).

Although the doctrine and its protective purposes are stated broadly, we must, in applying it, keep in mind two cardinal rules governing the exercise of federal court

jurisdiction. First, the federal courts should not anticipate a question of constitutional law in advance of the necessity of deciding it. Second, the federal courts should not formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. *See Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 501, 105 S.Ct. 2794, 2801, 86 L.Ed.2d 394 (1985); *see also United States v. Raines*, 362 U.S. 17, 21, 80 S.Ct. 519, 522, 4 L.Ed.2d 524 (1960); *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39, 5 S.Ct. 352, 355, 28 L.Ed. 899 (1885); *cf. Broadrick*, 413 U.S. at 615, 93 S.Ct. at 2917. Since the overbreadth doctrine represents a deviation from these general principles, we should employ it "sparingly and only as a last resort." *Id.* at 613, 93 S.Ct. at 2916.

Thus, the Court has held that the overbreadth of a statute "must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep," before a federal court may facially invalidate it. *Id.* at 615, 93 S.Ct. at 2918 (substantial overbreadth must be shown "particularly where conduct and not merely speech is involved"); *see also Brockett*, 472 U.S. at 503-04, 105 S.Ct. at 2801-02 (*Broadrick's* substantial overbreadth requirement also is applicable when pure speech rather than expressive conduct is at issue). In addition, a statute is not overbroad when the court can use a narrowing construction that limits the statute's reach to unprotected activity. In sum,

an individual whose own speech or expressive conduct may validly be prohibited or sanctioned is permitted to challenge a statute on its face because it also threatens others not before the

court -- those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid. If the overbreadth is "substantial," the law may not be enforced against anyone, including the party before the court, until it is narrowed to reach only unprotected activity, whether by legislative action or by judicial construction or partial invalidation.

Brockett, 472 U.S. at 504, 105 S.Ct. at 2802 (footnote omitted).⁸ I now examine the application of the overbreadth doctrine to a statutory licensing scheme.

⁸ *Accord Webb*, 919 F.2d at 1499-500 (considering the potential range of materials covered by a "harmful to minors" statute and the possible burdens the statute placed on adult access):

the [Supreme] Court has recognized that when overly broad statutory language seems to sweep protected First Amendment expression directly into the scope of a regulation affecting speech, or indirectly places an undue burden on such protected activity, free expression can be chilled even in the absence of the statute's specific application to protected speech. For this reason, the court has recognized the so-called overbreadth doctrine in the limited context of First Amendment facial challenges. Since the overbreadth doctrine in effect requires courts to evaluate the potential reach of a statute, conceivable sets of circumstances, and possible direct and indirect burdens on speech, "[t]he Supreme Court has noted that the overbreadth doctrine is 'strong medicine' that should be employed only 'with hesitation, and then "only as a last resort.'" "

B.

In the quintessential overbreadth challenge, a criminal defendant seeks to overturn his conviction under a statute that encompasses both protected and unprotected expression. The defendant may have engaged in unprotected speech, but the court will permit him to challenge the facial validity of the statute under which he was charged on the ground that the statute is so broad that it chills others from protected speech. In *Lewis v. City of New Orleans*, 415 U.S. 130, 132, 94 S.Ct. 970, 972, 39 L.Ed.2d 214 (1974), for example, the appellant was arrested and convicted for violating a New Orleans ordinance that prohibited persons from "wantonly . . . revil[ing] or . . . us[ing] obscene or opprobrious language toward or with reference to any member of the city police while in the actual performance of his duty." The Court held that it was immaterial whether the words the appellant used might be punishable under an ordinance that limited the prohibition to fighting words (clearly proscribable conduct). The ordinance could withstand attack only if it was "not susceptible of application to speech, although vulgar or offensive, that is protected by the First and Fourteenth Amendments." *Id.* at 134, 94 S.Ct. at 973. In other words, in overturning the appellant's conviction, the Court examined the "conceivable applications" of the New Orleans ordinance, finding that a broad swath of the proscribed conduct was constitutionally protected.

An overbreadth challenge also may lie when a statute, rather than imposing criminal penalties directly, authorizes a government official to administer a licensing

scheme and then criminalizes expressive activity undertaken without first obtaining a license. In an attack on such a scheme, a court asks whether the law delegates "unfettered discretion" to the licensor; if so, the potential for content- or viewpoint-based discrimination becomes so great that the court will invalidate the statute on its face. *See, e.g., Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-51, 89 S.Ct. 935, 938-39, 22 L.Ed.2d 162 (1969); *Staub v. Baxley*, 355 U.S. 313, 322-25, 78 S.Ct. 277, 282-84, 2 L.Ed.2d 302 (1958); *Kunz v. People of New York*, 340 U.S. 290, 294, 71 S.Ct. 312, 315, 95 L.Ed. 280 (1951); *cf. Niemotko v. Maryland*, 340 U.S. 268, 271, 71 S.Ct. 325, 327, 95 L.Ed. 267 (1951) (invalidating a licensing practice on overbreadth grounds). The court should not assume, however, that the licensor will disregard statutory directives that purport to circumscribe his discretion; only if the standards are themselves constitutionally inadequate will the court facially invalidate the statute.⁹ Thus, a licensing statute with "narrowly drawn, reasonable and definite standards for the officials to follow," *id.* at 271, 71 S.Ct. at 327, will survive facial scrutiny.

A statute or ordinance, on the other hand, that grants the licensor unbridled discretion – allowing him surreptitiously to discriminate against speech that he does not like – must fall when challenged. Facial invalidation is proper because the license applicant would find it difficult to show that, in a particular case, the licensor restricted the applicant's speech based on its content.

⁹ It is, of course, possible that the licensor will disregard the statutory standards, but the defendant can challenge that lapse in either an as-applied or state-law challenge.

While I acknowledge the strength of these concerns, I believe that the government properly may give public officials charged with administering licensing schemes a considerable degree of discretion before constitutional concerns are implicated.¹⁰

C.

1.

In the instant case, the Movement makes two contentions. It first contends that the County ordinance did not prescribe sufficiently tailored standards for the Administrator to use in reviewing permit applications. An examination of the ordinance reveals, however, that this contention is baseless:

Unless some significant interference with the rights of non-participating citizens exists, or the orderly flow of traffic would be obstructed unreasonably, or the public safety be endangered, or there be other unreasonable interference with the public welfare, peace, safety, health, good order, and convenience of the general public, the permit shall be granted.

Where more than one permit is sought for the same date, the administrator shall have authority to designate reasonable sites and set time schedules for the beginning and ending of the activity. The administrator shall have

¹⁰ This parallels the notion that a statute must be substantially overbroad before it is subject to facial invalidation; in both licensing and nonlicensing cases, the statute must sweep a significant range of protected activity within its reach or it will survive facial challenge.

authority to cancel the permit where the activity fails to begin within a reasonable time after the time set for it to begin, based on other activities for which permits have been granted or based on the unreasonable interference caused by such delay with the public welfare, peace, safety, health, good order and convenience to the general public.

Amended County Ordinance § 7(c). These requirements adequately circumscribe the Administrator's discretion; he must issue a permit unless he can point to a specific instance in which the ordinance permits him to deny a permit or reasonably modify the applicant's requested schedule or situs. *Cf. Hague v. CIO*, 307 U.S. 496, 516, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939) (affirming facial invalidation of ordinance that did not "make comfort or convenience in the use of streets or parks the standard of official action" but enabled the licensor "to refuse a permit on his mere opinion that such refusal [would] prevent 'riots, disturbances or disorderly assemblage'").

The Movement argues alternatively that the County ordinance does not provide narrowly-drawn, reasonable standards for the Administrator to use in setting fees. Although the ordinance allows the Administrator considerable scope in assessing a fee, it limits his discretion in two important respects: it limits the permissible range of fees that the Administrator can charge, from zero to \$1000, and the permissible components of the fee, sums necessary to meet the expenses incident to (1) the administration of the ordinance and (2) the maintenance of public order. These limitations mirror the statutory limitations that the Supreme Court upheld in *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941).

In *Cox*, a New Hampshire statute that imposed a "reasonable" license fee for each day of a parade, procession, or open-air public meeting, and criminal penalties for activity undertaken without such a license, survived constitutional scrutiny. The facts were as follows. A group of Jehovah's Witnesses paraded in the business district of the City of Manchester without a license; they were arrested and later convicted for violating the statute. They then challenged the facial validity of the statute on first amendment grounds.

The Supreme Court, on direct review, upheld the convictions even though the statute permitted the licensor to charge a fee of "not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open-air meeting shall take place." *Id.* at 571 n. 1, 61 S.Ct. at 764 n. 1. The Court emphasized that a prior state supreme court opinion had construed the statute to require "a reasonable fixing of the amount of the fee." *Id.*¹¹ In addition, the state court had held that the fee was "not a revenue tax, but one to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed." *Id.* at 577, 61 S.Ct. at 766. The

¹¹ The state supreme court also noted that under the New Hampshire statute "the charge for a circus parade or a celebration procession of length, each drawing crowds of observers, would take into account the greater public expense of policing the spectacle, compared with the slight expense of a less expansive and attractive parade or procession, to which the charge would be adjusted." *Cox*, 312 U.S. at 576-77, 61 S.Ct. at 766.

Supreme Court determined that a fee "limited to the purpose stated" was constitutional, *id.*, at least so long as it has been administered in a fair and nondiscriminatory manner, as required by the state court construction, *id.*

The Court then contrasted the discretion granted to the *Cox* licensor with the discretion of the licensor in *Hague v. CIO*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939). In *Hague*, the licensor had minimal standards to guide him in reviewing applications. He could prohibit assembly on the streets, but he was not instructed to make "comfort or convenience in the use of streets the standard of official action"; rather, he was to refuse to issue a permit if, in his opinion, such refusal would prevent "riots, disturbances or disorderly assemblage." *Cox*, 312 U.S. at 577, 61 S.Ct. at 766. After considering that limitation, the Court held that the licensor's discretion was not sufficiently channeled and, hence, was unconstitutional. *Hague*, 307 U.S. at 516, 59 S.Ct. at 964. The statute in *Cox*, on the other hand, instructed the licensor to approve all applications if "the convenience of the public in the use of the streets would not thereby be unduly disturbed" – he merely could assess a reasonable fee for doing so.

Even though the discretion accorded to the licensor in *Hague* was far more sweeping than that in *Cox*, the *Cox* licensor – as well as the Administrator here – could, contrary to statute and the Constitution, adjust the fee to discriminate on the basis of content or viewpoint. If, for example, the licensor opposed the parade application of an impecunious pro-life group, on the basis of its views, and supported the application of an impecunious pro-choice group, he could, under the ordinance, charge the

full administrative and public order expenses (up to \$1000) to the pro-life group, while charging the pro-choice group a \$1 fee. He thus could set a fee that effectively would prohibit the pro-life group from parading.¹² While recognizing some potential for content-based discrimination, *Cox* held that the restrictions the statute placed on the licensor would curtail such abuses of discretion. First, the statute, in that case, placed a cap of \$300 on the fee that the licensor could charge the applicant. Thus, even if the licensor misused his discretion, the barrier he erected would not be, in theory, absolute. The statute also limited the permissible components of the fee. Thus, if the licensor calculated the administrative and public order expenses associated with the pro-life group march at only \$50, he could charge no more.

Given these inherent limits on the licensor's authority, the Court next considered the benefits that would be realized by permitting the licensor some leeway in assessing fees. The Court noted that the statute's scope of discretion, although carrying with it the possibility for content-based discrimination, permitted a licensor to adjust fees in accordance with the actual administrative and public order costs an applicant imposed on the state

¹² The ordinance could be read to prohibit this type of discrimination – under one interpretation, the ordinance compels the Administrator to impose the *full* administrative and public order expenses on the applicant. (The ordinance states the “[t]he Administrator shall adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed.”) This was not, however, the interpretation adopted by the Administrator here.

rather than simply imposing a flat fee that approximates those costs (the average cost imposed by all applicants). Consequently, if an applicant requested permission to assemble with five other persons in a county park, then he would pay less than fifteen hundred people who wanted to parade down a major thoroughfare; likewise, the applicant with meager resources would pay less than the applicant with plentiful resources. The Court “perceive[d] no constitutional ground for denying to local governments that flexibility of adjustment of fees which in the light of varying conditions would tend to conserve rather than impair the liberty sought.” *Id.* I, too, believe that the ability to draw these distinctions is desirable.

Since the limits the County ordinance places on the Administrator's discretion to set a permit fee accord with the limits on the licensor's discretion in *Cox*,¹³ that case should control unless later Supreme Court precedent or congressional directives instruct otherwise.

2.

The panel opinion, and now the majority of the en banc court, holds that the County ordinance is facially invalid because it permits the Administrator to assess more than a nominal fee. According to the court, the Constitution limits not only the permissible components of a fee – the cost of administering the ordinance and the

¹³ Even though the County ordinance permits the Administrator to assess up to a \$1000 fee – not simply a \$300 fee – a \$1000 fee imposed in 1990 would be less, when adjusted by the consumer price index, than a \$300 fee imposed in the *Cox* case in 1941.

maintenance of public order – but also its size. *Nationalist Movement v. City of Cumming*, 913 F.2d 885, 891 (11th Cir.1990). The court does not adequately explain, however, why the fee must be nominal, or even what that term means in this context; it merely tells us that the Supreme Court, in *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943), read *Cox* to sanction only a nominal fee. The panel opinion, and the en banc court, thus adopt the interpretation of *Cox* and *Murdock* employed by a panel of this court in *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1521 (11th Cir.1985), *cert. denied*, 475 U.S. 1120, 106 S.Ct. 1637, 90 L.Ed.2d 183 (1986).

In *Walsh*, a panel of this court invalidated an ordinance that forced persons using city streets and parks for expressive activities to pay the full cost of additional police protection necessitated by those activities. In that case, an organization calling for a nuclear freeze (the Campaign) wanted to conduct a parade and rally in the City of Orlando (the City); approximately one thousand people were expected to attend. Before the City would issue a permit, the Campaign had to pay the City \$1435.74 for the additional officers needed to police the march. The chief of police, who had authority under the ordinance to "determine whether and to what extent additional police protection reasonably w[ould] be required for the assembly for purposes of traffic and crowd control," *id.* at 1516 n. 2, considered several factors – including his belief that due to the controversial nature of the rally, the close proximity of Martin Marietta, and the probable attendance of out-of-town demonstrators,

"the potential for hostile counter activity existed"¹⁴ – and determined that more than the usual number of officers were needed to police the event.

In assessing the constitutionality of Orlando's ordinance, the panel had this to say about *Cox*:

The [Cox] Court therefore viewed the fee requirement as charges to meet expenses incidental to the administration of the regulation and the costs of policing the event. Although the Court did uphold the fee requirement, it is important to note that the Court did not touch on the reasonableness of the fees or how they could be fixed. Thus, important questions still remain about the application of *Cox* under modern constitutional doctrine. Importantly, the *Cox* Court did not address circumstances where persons who wish to demonstrate are unable to pay the required fee, nor did the Court concern itself with a statute which is unlimited in the amount of fees that can be charged as expenses, nor with the question whether the charge can be based, at least partially[,] on the content of the speech.

Id. at 1522. The court went on to consider the degree to which *Murdock*, *see infra* p. 4022, clarified when a governmental entity can charge fees as a prerequisite to the exercise of First Amendment rights in a traditional public forum. It concluded that *Murdock* only authorizes such an entity to charge a fee that is both nominal and related to the expenses incidental to the administration and policing of the event. *Id.*; *see also id.* at 1523 ("Although license

¹⁴ The ordinance required the Chief to consider such factors as the size, location, and nature of the assembly.

fees are proper for the costs of administering an event, under the Supreme Court's decision in *Cox v. New Hampshire*, we read *Cox* as authorizing only nominal charges for the use of city streets and parks to further First Amendment activities."). *Contrast Kaplan v. County of Los Angeles*, 894 F.2d 1076, 1081 (9th Cir.1990) (more than a nominal fee for use of a nontraditional public forum is permissible). Although the panel did not clearly state why only nominal fees survive constitutional scrutiny, the court noted that to the extent that the fees charged to the Campaign were tied to its views – i.e., more police protection was required for demonstrators with more controversial views – the fees were unconstitutional, *id.* at 1524-25; while the presence of out-of-town demonstrators and the potential for hostile counteractivity were proper factors to be considered in determining what level of police protection was needed for a public demonstration, such factors could not be considered in fixing the fee to be charged to those seeking to exercise their first amendment rights. The court stated:

The effect of the Orlando ordinance, as applied in the case at hand, is to charge more for First Amendment activity which may require more police protection than less controversial speech; such a result places an undue burden on speech which is constitutionally unacceptable.

Id. at 1525.

I agree with this reading of *Cox* and *Murdock*, but I also believe that we should explain why only a "nominal" fee is constitutional – an idea that neither the panel opinion in the instant case nor *Central Florida* sufficiently developed. Once the reasoning that underlies the rule is

revealed, it becomes apparent that the facial challenge to the statute in *Cox* would still fail today – the *Cox* Court properly determined that the licensor's discretion was limited in accordance with the Constitution. I first examine the relevant Supreme Court authorities, which tell us when the licensor's discretion exceeds the constitutional limits, and then analyze the Forsyth County ordinance in light of them.

In *Murdock*, a case decided only two years after *Cox*, the Supreme Court carefully circumscribed the *Cox* holding. *Murdock* involved a city ordinance that required all persons who solicited orders for any kind of merchandise to procure a license at a specified cost. *Murdock*, 319 U.S. at 106, 63 S.Ct. at 872 ("[f]or one day \$1.50, for one week seven dollars (\$7.00), for two weeks twelve dollars (\$12.00), [and] for three weeks twenty dollars (\$20.00)"). Jehovah's Witnesses, who had distributed literature and solicited door-to-door, were convicted and fined for engaging in such expressive activities without first purchasing licenses.

The Supreme Court struck down the ordinance as applied; the petitioners were engaged in selling activities merely incidental to their main object, which was to preach and publicize the doctrines of their order. The government, the Court held, could not impose a substantial financial burden on the petitioners simply for exercising their constitutional rights. *Id.* at 112-13, 63 S.Ct. at 874-75. The Supreme Court then contrasted the license fee in *Murdock* to a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. *Id.* at 113-14, 63 S.Ct. at 875. According to the

Court, the situation before it clearly was unlike that in *Cox*; in *Cox* the state regulated the streets

to protect and insure the safety, comfort, or convenience of the public. Furthermore, the present ordinance is not narrowly drawn to safeguard the people of the community in their homes against the evils of solicitations. As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. *And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors.*

Id. at 116, 63 S.Ct. at 876 (citation omitted; emphasis added). This language, I believe, restricts *Cox* to the proposition that any fee imposed on the exercise of first amendment rights in a traditional public forum, even if calculated to defray the administrative or public order expenses associated with the activity, must be nominal if it is to survive constitutional scrutiny.¹⁵ It is important, however, to consider the reasons underlying the *Murdock* holding.

¹⁵ The implications of this language are even more restrictive. In *Murdock*, the Court indicated that a nominal fee could be exacted to cover the costs of protecting those who might be harmed by the exercise of constitutional rights. At least in some instances in which members of an organization seek a parade permit, the police protection and maintenance of public order is necessitated by the potential disruptiveness of the crowd – not the participants in the parade.

I believe that the *Murdock* Court characterized such license fees as “nominal” because it recognized that anything more than a nominal fee likely would be content – or viewpoint-based – on its face or in its impact – and thus contrary to the First Amendment, *see, e.g., United States v. Grace*, 461 U.S. 171, 177, 103 S.Ct. 1702, 1707, 75 L.Ed.2d 736 (1983) (government may enforce reasonable time, place, and manner regulations in public forums as long as the restrictions are content-neutral); *Linmark Assocs., Inc. v. Township of Willingboro*, 431 U.S. 85, 96, 97 S.Ct. 1614, 1620, 52 L.Ed.2d 155 (1977). *See generally Stephan, The First Amendment and Content Discrimination*, 68 Va. L.Rev. 203 (1982). For example, if the Administrator calculated the public order expense to include the cost of protecting the Movement from irate citizens of Forsyth County, the public order expense would vary directly with the controversy surrounding the Movement’s views, i.e., it would be content-based. If these costs constitutionally could be shifted, opponents of the Movement effectively could prevent its speech by civil disobedience (the heckler’s veto). Likewise, if the Administrator spends an inordinate amount of time on the Movement’s application because he feels that its assembly carries with it the potential for conflict, the Administrator’s actions are related to the content of the Movement’s speech. The Administrator may, for example, talk for hours with the chief of police, conferring with him as to how they can avert a breach of the peace by counterdemonstrators. Or he may seek counsel from the County attorney, or advice from the County commissioners, as to whether he may deny the Movement’s petition because he would prefer that the Movement not assemble in the County. In either

instance, the administrative expenses are related to the content of the Movement's speech, and it would be unconstitutional to assess it any percentage of these costs. Because of this potential for content-based discrimination, the *Murdock* Court, as a prophylactic rule, requires licensors to impose only nominal fees – even in cases in which the content neutrality of the charges has not been questioned. Thus, a license fee must be both nominal *and* content-neutral.

While the *Murdock* Court did not elaborate on the precise meaning of "nominal," it seems that the fee must be small in relation to the total administrative and public order expenses necessary for the County to perform its obligations and small in relation to the applicant's financial resources. According to Webster's New World Dictionary (D. Guralnick 2d ed. 1972), "nominal" may mean either "in name only, not in fact {the *nominal* leader} [or] very small compared to usual expectations; slight {a *nominal* fee}." Cf. Black's Law Dictionary 946 (5th ed. 1979) ("[n]ot real or actual; merely named, stated, or given, without reference to actual conditions; often with the implication that the thing named is so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name"). If, however, the Court had used nominal to denote "in name only": a "peppercorn" or a dollar, it presumably would not have articulated two permissible components of the fee. Given then the potential range of fees that constitutionally may be assessed, I do not believe that the County ordinance

sweeps so broadly that we must facially invalidate it.¹⁶ Instead, I believe that the Movement should prevail only if it can demonstrate that, in the instant case, the Administrator assessed it an unconstitutional fee.

II.

While a nominal fee related solely to the cost of processing an application would be acceptable under Supreme Court precedent, *see Cox*, 312 U.S. at 577, 61 S.Ct. at 766; *Murdock*, 319 U.S. at 116, 63 S.Ct. at 876, a fee, whether relating to administrative or public order expenses, that has a substantial disparate impact on persons espousing controversial views is unconstitutional. The district court found, however, that the Administrator based his decision to charge a \$100 fee

solely on the efforts he expended researching the plaintiff's application, and not on the potential cost of attendant police protection which might be occasioned by the parade. . . . [T]he determination of the fee under those circumstances is based solely upon content-neutral criteria; namely, the actual costs incurred investigating and processing the application, regardless of the nature of the applicant's proposed assembly.

¹⁶ In *Walsh*, this court does state that the City ordinance gave the chief of police unbridled discretion and, consequently, it should be facially invalidated on that ground as well. I believe that *Cox* forecloses this approach. (*Walsh* is, in any case, distinguishable. The Orlando ordinance permitted an *unlimited* charge for additional police protection based on factors such as the "size, location and nature of the assembly.")

Thus, the district court held that the Forsyth ordinance did not implicate the constitutional concerns expressed in *Central Florida* that the fee might be content-based. (The court did not, however, examine whether the Forsyth ordinance provided for a nominal fee; rather, it looked at the lawful components of that fee, holding that, under the facts of this case, the fee was based solely on the costs of processing the application and that this was constitutionally permissible.) While I do not believe that administrative expenses necessarily are content-neutral, *see supra* pp. 4023-4024, on the facts of this case, I believe that the district court did not err in determining that there was no discrimination.¹⁷ Even if, however, the fee imposed was

¹⁷ The Movement presented no evidence that the fee was assessed on the basis of content, nor does the fee seem to be so excessive, particularly considering the facts surrounding the application process, that we necessarily are led to that conclusion. The Movement first submitted its application to the County in April 1987, over nine months before the rally. The County, relying on the terms of its amended ordinance, determined that the Movement improperly submitted the application more than 60 days prior to the scheduled event. The Administrator reviewed the application with the county attorney and determined that it must be resubmitted within the applicable deadlines. The Movement then reapplied within the County timetable and the Administrator processed this request. Before the Administrator made a final decision on the application, however, the Movement decided to change its scheduled assembly time, from the morning to the afternoon of January 21st. After reviewing this amendment, the Administrator approved the application and sent a letter to the Movement stating that it would be permitted to assemble subject to payment of a \$100 license fee. In essence, the Movement made three applications.

content-neutral, the district court should have determined whether the fee was nominal, i.e., was it small relative to the *necessary* fees incurred by the County¹⁸ and the applicant's resources. Thus, I would REMAND the case to the district court so that it may address this issue.¹⁹

FAY, Circuit Judge, dissenting, in which ANDERSON and EDMONDSON, Circuit Judges, join:

¹⁸ Such an inquiry requires the district court to examine whether the time the Administrator spent on the Movement's application was reasonably necessary, e.g., was the time spent in consultation with County counsel appropriately considered as a cost of processing the Movement's application or was it attributable to general "start-up" costs, i.e., establishing general interpretive principles concerning the statute, that should be spread among current and future applicants? Necessary administrative expenses likely would vary depending on the location of the governmental entity; administrative expenses in New York City, for example, may be significantly higher than in Forsyth County, Georgia. In addition, I note that when the County purports to limit itself to charging a portion of the administrative fees, the fee it charges must be nominal in relation to those fees and not necessarily in relation to the total of administrative and public order expenses.

¹⁹ Since I believe that the calculation of a nominal fee encompasses a determination of a fee that is small in relation to the resources of the applicant, I do not believe that the fee waiver provisions, even if uncertain, implicates its own constitutional concern. If, for example, a licensor assesses a \$100 fee on an impecunious applicant and then refuses to waive that fee, the applicant challenges that levy on the ground that it is not nominal, not that the licensor would not waive the fee. On these facts, the applicant will prevail since a \$100 fee is not nominal in relation to his resources.

A majority of the en banc court has reaffirmed the law of our circuit as established in *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515 (11th Cir.1985) that only nominal charges are constitutionally authorized for the use of city streets and parks in connection with parades and rallies in furtherance of First Amendment activities. Although I am pleased that the en banc court considered this important question, it is my opinion that we continue to misread and misinterpret *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) and *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943). Most respectfully I dissent for the reasons stated in my special concurrence filed with the panel opinion.

APPENDIX E
Atlanta Journal and Constitution, January 18, 1987
Violent protesters disrupt Forsyth march
Klux Klansmen throw bottles and rocks at demonstrators
By John Brady and Joe Earle Staff Writers

CUMMING, Ga. — Ku Klux Klansmen and their sympathizers threw bottles and rocks at marchers here Saturday, turning a "brotherhood anti-intimidation" demonstration into a violent confrontation.

Some of the estimated 90 marchers were bruised or cut slightly, but no one was seriously injured in the attacks, law enforcement officials said later.

Eight counterdemonstrators were arrested on charges ranging from disorderly conduct to trespassing to carrying concealed weapons, said Forsyth County Sheriff Wesley Walraven.

The violence erupted as about 400 counterdemonstrators, some wearing robes and camouflage fatigues, lined the parade route, shouting racial slurs at the marchers, who had gathered about two miles outside of Cumming on Georgia 141.

The Klan members and supporters chanted "Go home, nigger!" and carried signs such as "Forsyth Stays White" and "Sickle Cell Anemia — The Great White Hope."

The counterdemonstrators were able to get around beleaguered officers flanking the marchers and began throwing rocks and beer bottles. Some of the marchers used coats to cover the heads of children accompanying them.

"Things got out of hand," Walraven said.

About 75 officers from the Georgia Bureau of Investigation, the State Patrol, the sheriff's department and the

local police force were assigned to crowd control for the march, officials said.

"We lost control of the crowd," said Bonnie Pike, inspector of field operations for the GBI.

Law enforcement officials said later that they did not have enough officers on duty, but Walraven said that authorities weren't expecting so many people to show up. "We felt we did the best we could with what we had to work with," he said.

"The police let it get out of hand," said Atlanta City Councilman Hosea Williams, who led the march. "It's just by the grace of God that someone didn't get killed".

"In 30 years in the civil rights movement, I've never seen it worse than this," said Williams, who claimed he was hit by a brick during the assault.

Williams and other marchers emphasized the irony of racial violence occurring just two days before the nation is to celebrate the federal holiday honoring slain civil rights leader Martin Luther King Jr., with whom Williams served as a principal organizer of protests.

"In 1987, who would believe this kind of racial violence in America?" Williams asked. "This is as bad as South Africa."

At an impromptu news conference Saturday evening, Coretta Scott King said she condemned the Forsyth County violence.

"We have learned a valuable lesson today: that we must stay ever vigilant to protect those freedoms which were so clearly won by Dr. King and his non-violent

followers. We pray for the people involved in these violent acts and the people of Forsyth County and for all those injured," she said during the briefing at the Marriott Marquis.

Later Saturday, speaking at a fund-raising dinner for the Martin Luther King Jr. Center for Nonviolent Social Change, Fulton County Commission Chairman Michael Lomax said the incident in Forsyth proved that "racism is alive and well" only 30 miles outside Atlanta.

"But we [sic] must show these hate-mongers that decent people outnumber indecent people even in Forsyth County," Lomax said.

The march - scheduled last week by Hall County martial arts instructor Dean Carter to protest the cancellation of a "brotherhood walk" after organizers were threatened - was shortened because of the violence.

After marching about three-fourths of a mile down Georgia 141, the marchers, many of whom were brought to Forsyth County by bus from Atlanta, agreed with a request from Walraven to reboard the bus so they could be separated from the counterdemonstrators.

They sang "The Star-Spangled Banner" as they reboarded.

The marchers then were bused about three-fourths of a mile down the road, where they again began walking.

A grim-faced Walraven led the way as the procession resumed.

"Give me a helmet, we're going to finish this damn march," Walraven said, donning the headgear. "There are

about 50 demonstrators ahead and we're going to let them finish their march if it costs us a head knocking."

Preceded by a dozen Forsyth deputies clad in riot control gear and the helmeted sheriff, and flanked by GBI agents wielding riot batons, the marchers walked another half mile and held a brief rally.

The march ended with a verse of "We Shall Overcome" reworded to "Forsyth, we will be back someday."

After the march, nearly 1,000 Klansmen and sympathizers assembled at the Forsyth County Courthouse in Cumming and listened to speeches from various speakers, including white supremacist J.B. Stoner.

Former Gov. Lester Maddox was present at the rally, but said he was not a participant.

During the rally, members of the crowd gave Nazi salutes – which they called "Roman salutes" – and shouted "white power."

Stoner, who also addressed the crowd at the start of the march, told the crowd at the courthouse that they had "won a great victory today."

"The only way you can keep love and peace and tranquility in Forsyth County is to keep those black savages out," he said.

During the rally, Dave Holland, grand dragon of the Southern White Knights of the Ku Klux Klan, attacked interracial marriage and MTV, predicted a race war, and called the city of Atlanta "a disgrace" to the state, country and world.

The march had been scheduled to start at 10 a.m., but did not get under way until about 10:45 a.m. Klan members and their supporters had begun gathering by 9 a.m. for a rally in a field across the road from the march's starting point.

At first, a carnival atmosphere prevailed, with members of the group making racial jokes as curious local people looked on.

More than half a dozen Confederate battle flags were waved and banners saying "Racial Purity in Forsyth County" were displayed. Stoner distributed leaflets headlined "Praise God for AIDS."

But once the marchers arrived, the crowd immediately turned mean. Law enforcement officers escorted the marchers' bus and several cars past the field where the Klansmen and their supporters were gathered, and the crowd of hecklers swarmed out of the field, leaping barbed wire fences. They caught up with the marchers as they got out of the bus.

The hecklers' ranks seemed to swell as they screamed taunts, threw peanuts and shadowed the line of marchers down the two-lane country road. The marchers walked two-by-two, keeping their bus and cars between themselves and the hecklers as a shield.

A line of Lawmen and State Patrol cars was also between the Klan crowd and the bus, trying to keep the hecklers from getting to the marchers.

Some of the hecklers ran ahead of the marchers, and others dropped behind. Outflanked at both ends, the outnumbered lawmen could not keep the crowd from

crossing the road and the march was surrounded with rocks and bottles coming from all directions. After the march, Williams stood in a small group of marchers alongside the bus while the riot-gear clad officers surrounded the group and kept away a small contingent of counterdemonstrators.

"I haven't seen racism any more sick than here today," Williams said. "The whole nation and the whole world will look at this."

He vowed to return to Forsyth County for future demonstrations. "This is not the end of marching in Forsyth County," he said.

APPENDIX F

Atlanta Journal and Constitution, January 25, 1987

THE MARCH IN FORSYTH COUNTY

Huge size of "army" stung foes

By Bill Montgomery Staff Writer

CUMMING, Ga. — The people with the Confederate flags and the bitter handwritten signs denouncing Atlanta, blacks and race-mixing kept up noisy shouts and cheers throughout the day in a pep rally mood.

But the protesters fell into stunned silence when the marchers they had gathered to see came into view a hundred yards away, an awesome sea of blacks and whites stretching across Cumming's main street.

Shane Pruitt, a 16-year-old insulation company worker, leaned on the staff of the Confederate flag he was holding and blurted in a hushed tone: "God almighty, man, look at all those people."

Seconds later, he repeated his bewilderment at the size of the oncoming crowd marching for brotherhood and the right for blacks to live in all-white Forsyth County. As the civil rights marchers turned onto a side street in the courthouse square — a route that kept them a good block from their antagonists — Pruitt said, "Man, they're still coming. Look at that."

"They're invading our home like a foreign army," said a woman standing beside Pruitt. The heavy-set matron, who declined to identify herself, said she and her husband had moved here recently from Decatur because "we were persecuted by the blacks that kept moving into our neighborhood."

The number of white supremacists and their sympathizers fluctuated as people came and left throughout the day. But at their peak, more than 1,000 whites were assembled to protest the march.

The Confederate flags were waved, about 50 in all, some as big as beach blankets, others as tiny as postcards. A monkey doll hung from the pole of a banner carried by Jerry Lord, who said he was a member of the Forsyth County Defense League. Asked how many people were in the organization, Lord gestured toward the crowd and said, "As many as you see."

The white protesters ran the gamut from mothers with young children to teenagers to grizzled men in baseball caps. Many of the younger men wore camouflage fatigues, while others were attired in blue jeans and jackets over T-shirts advertising wine coolers, designer clothes and beer. At one point, four men who said they were members of the Invisible Empire Knights of the Ku Klux Klan, clad in plain white robes and pointed hoods, joined the group.

And a handful of young men, like Paul Stetar, a bearded 26-year-old welder from Athens and an avowed member of the National Socialist White People's Party, wore the Nazi swastika in various forms.

Stetar said he was not present at a biracial march last Saturday that was peppered with rocks and bottles by white supremacists. "I wished I was there, and I'm here now to demand the white people have the same rights as the niggers," he said.

The anti-civil rights protesters began gathering as early as 9 a.m. across Georgia Highway 9 from the Lanier Village shopping center, hours in advance of the scheduled arrival of the marchers.

Not all the crowd members waved flags or wore exotic regalia. Ray Jenkins, a construction worker from neighboring Dawson County, and his wife, Karen, said they were motivated partly by curiosity, though they readily said they did not want blacks living in their area.

"Cumming will let them blacks come [sic] through and work and eat here. But Hosea Williams wants to force them on us," Jenkins said.

Jenkins added that he was "in the front line" of last Saturday's counterdemonstration and shouted abuse at the marchers.

"I wanted to let them know they weren't welcome up here. That's why I'm here today. Where there's a lot of black people, there's a lot more crime. Statistics will tell you that," said Jenkins.

Reporters and camera crews clustered around Jerry Brown, a 26-year-old paraplegic waving three medium-sized American flags, two in one hand. Wearing a smudged Confederate Civil War-style forage cap, one leg twisted under the other in his wheelchair, Brown said his brother had been killed in Vietnam and that he had fought "the damn draft dodgers, Martin Luther King and those hippies who spit on our men when they came back."

Brown issued a stream of invective, including shots at Northern reporters - "New York, you can keep the

whole damn state," at blacks - "We believe in equal rights, but niggers want it all," and at the late Martin Luther King Jr. - "Thank God for James Earl Ray King's assassin."

Brown - a Forsyth County native who said he was crippled in a hunting accident in 1972 - was taken into custody later Saturday as he reacted angrily to the arrests of three white supremacist leaders during a rally near the courthouse, where the protester had moved.

Witnesses in the crowd said Brown screamed at Georgia Bureau of Investigation agents after the arrests of David Duke, Frank Shirley and another protest leader, calling the agents cowards and hypocrites. The blue-jacketed GBI agents lifted Brown's wheelchair by its armrests and carried it over the barricades as other agents pushed into the crowd to quell an angry response.

Brown's wife, Lori, her features twisted with rage screamed at the arresting officers that her husband "wasn't doing nothing but giving his opinion."

Anti-Black hand-lettered signs were plentiful throughout the protest group, several of them aimed at Atlanta City Councilman Hosea Williams and his history of traffic arrests. "Keep the blacks in Fulton County and out of sight," proclaimed one sign. "The snow is God's way of saying, 'Let's keep Forsyth County white, white,'" said another.

Many of the protesters, both men and women, wore on their clothing bumper stickers using a Valentine's Day heart to proclaim their love for white people.

Edward Fields, editor of the racist tabloid The Thunderbolt, and J.B. Stoner, a veteran anti-Semite and white supremacist recently released from prison after serving time in a 1958 Alabama church-bombing, were also in the crowd.

Fields told a cheering throng that last Saturday's violence began as "a peaceful Ku Klux Klan rally, and then Hosea Williams comes up with a busload of niggers and demands that they be dumped right in front of our rally. He instigated a riot to get all these people from up North down here."

Richard Barrett, a lawyer from Jackson, Miss., and onetime candidate for the Supreme Court of that state, told the crowd, "Martin Luther King was the past; Jesse Jackson has the present, but we, the white people of America, have the future."

As the whites roared their approval, a slender brunette standing with a gangly youth raised her head from his shoulder and kissed her boyfriend on the cheek.

THE MARCH IN FORSYTH COUNTY

Soldiers of various stripes step forward for civil rights
By Jim Auchmutey and Priscilla Painton Staff Writers

The group waiting in Cumming carried a sign that paid no heed to spelling: "Go Home, Niger." The group

walking into Cumming bore a placard from an alien culture: "The Klan: Drag Queens from Outer Space."

Separating them were more than 1,700 armed National Guardsmen, standing shoulder to shoulder, wearing combat helmets, camouflage and bulletproof vests. "It looks like a scene from a war movie," said Forsyth County resident David Hansen, 21, one of 75 who participated in last weekend's ill-fated brotherhood rally.

Those marchers, a thin stream of men, women and children outnumbered 4 to 1, were pelted with rocks and stones.

But this Saturday, a fleet of 175 buses delivered [sic] at least nine demonstrators for each of Cumming's 2,100 townspeople. These marchers overcame with sheer numbers and celebrity.

As the column of 20,000 people wound down the narrow, guarded road into Cumming, ripples of recognition swept through the sea of onlookers. People nudged each other and pointed at Coretta Scott King. "Is that Jesse Jackson?" one woman asked in a stage whisper. It wasn't; he didn't show.

At first the marchers were quiet. Soon a few of them were singing a chorus of the old civil rights hymn, "Ain't Gonna Let Nobody Turn Me 'Round," until several march leaders turned around and shushed them. They wanted no provocation coming from their side.

One man in a Confederate cap sat videotaping the oncoming crush of humanity, and soon network TV crews were taping him taping.

One Cumming family stood on their front porch waving at the marchers, an American flag flying from their house.

One middle-aged couple shouted obscene racial epithets at the visitors as their small child watched expressionless on the hood of their car.

The marchers started mustering before dawn in downtown Atlanta along Auburn Avenue, the cradle of the civil rights movement. By 8 a.m. the street in front of Martin Luther King Jr.'s tomb was gridlocked with tour buses, taxis and hundreds of people clutching mufflers and placards reading "Black by Popular Demand."

They were an army as varied as any that ever mobilized for civil rights. There were spiked-hair punks as well as frizzy-haired boxing promoter Don King. There were 125 members of a San Francisco church as well as a Greek Orthodox abbot from Cleveland. There were duck shoes and down vests and souvenir sweatshirts - "I Was There in Cumming, GA." - that could be bought for \$10.

Jesse Wineberry, a Washington state representative, jetted from Seattle. "If people can come across country to go to a football game, I figured I could head the other direction to march for freedom," he said.

Judy Gussler ferried a group from Columbus, Ohio, in her silver Ford mini-van. "In '63 I wanted to march with Dr. King to Washington," she said. "I never did, and, for me, maybe this makes up for it."

Rob Trawick, a Duke University sophomore, left Durham, N.C., Friday with three friends and drove all night in a rental car, arriving at the Atlanta Civic Center

staging area by 4 a.m. "Some of our friends thought we were kind of dumb to do this," he said. "We're a little scared, but I have a credit card. I think they take those at hospitals."

Meanwhile, 40 miles north in Cumming, where the bright sun was beginning to melt a crunchy mantle of snow, the town seemed to be in hiding. Few downtown businesses were open, and "closed" signs were posted at most roadside establishments.

At the beginning of the parade route, 1.2 miles south of town, hundreds of people milled around the Lanier Plaza Shopping Center. Most of them were march sympathizers such as David Hansen, the veteran of the first rally. Surveying the gathering, he said, "This is just what the county needs. The more racismis [sic] exposed, the more we can get it out of here."

The actual rally at the courthouse lasted barely an hour, as a succession of politicians delivered some of their quickest speeches. More than a few black marchers expressed their desire to leave the scene before sundown - Guard or no Guard.

"To tell you the truth, I only see two men in Klan robes the whole time," said Atlantan Carmelita Williams, whose 8-year-old daughter, Desiree, roller-skated the march route.

Back in Atlanta, lounging on the cold tile floor of the Civic Center, Erin Edwards, a Tallahassee high school student, dined on a candy bar and marveled at the lack of violence. "I don't guess there's much you can do when about 20,000 Guardsmen are standing around."

"It's very easy to look at those people in Forsyth Countyas [sic] some sort of scaly, green-skinned monsters," said her bus mate, Betsy Parsons, a 28-year-old law student from Tallahassee. "But they're human beings too. That was the point of all this."

Perhaps some moment best captured this attitude Saturday afternoon. "We hate you, we hate you, we hate you," chanted white onlookers at the column of demonstrators.

"We love you, we love you, we love you," the marchers answered.

THE MARCH IN FORSYTH COUNTY

**20,000 march on Forsyth County
60 arrests mark day of tension,
1,000 turn out in counterprotest**
By Mike Christensen Staff Writer

CUMMING, Ga. - The civil rights movement came face-to-face with the remnants of Southern segregation here Saturday as 20,000 marchers for brotherhood encountered about 1,000 angry white protesters in the heart of Forsyth County.

The largest civil rights demonstration in two decades, more than one-third white and led by Coretta Scott King and civil rights veterans Hosea Williams, Joseph Lowery and Benjamin Hooks, poured into this largely rural

county that has gained a national reputation for intolerance following an attempted march last weekend that was cut short by violent anti-black protesters.

The opposition the marchers met this time was a mixture of local blue-collar workers, Ku Klux Klan members and other white supremacists who had come to this town just north of metro Atlanta.

Safeguarded by 3,000 state and local police and National Guardsmen, most of whom wore visored helmets and carried riot sticks, the marchers for brotherhood made their way over a mile-long route to the county courthouse past jeering crowds of whites waving Confederate flags.

Sporadic rock-throwing erupted at one street corner but was quickly broken up by Georgia Bureau of Investigation agents.

A wedge of blue-jacketed Georgia Bureau of Investigation agents and Guardsmen broke into the crowd of white protesters at one point in the march. Agents chased down one young man who spit on them, tackling him in the mud and shoving his face against a chainlink fence. He was led away with blood running from his nose.

One man in the march was hospitalized after being hit in the head by a brick, and a young woman was treated after she was struck with a metal pipe.

A black man received minor cuts when a group of whites smashed a concrete block into his car window after the march.

Police made 60 arrests, nearly all of them civil rights protesters, on charges ranging from obstructing a street

to incitement to riot, according to Forsyth County Sheriff Wesley Walraven, who walked with several deputies at the head of the march.

In contrast to civil rights demonstrations of two decades ago, most of those arrested Saturday were whites opposing civil rights rather than blacks demanding equality.

U.S. Sens. Sam Munn and Wyche Fowler accompanied Assistant Attorney General William Bradford Reynolds to the courthouse, and Reynolds later participated in the march. Former Sen. Gary Hart, Democratic presidential candidate, also attended.

Though Forsyth County government, civic and business leaders said they welcomed the marchers and denounced last week's incident in which 90 peace demonstrators were set upon by 400 whites, racial hatred pervaded the crowds hemmed into side streets around the courthouse square in Cumming.

"They said they were goin' to come up here and rub it in our faces. Nobody don't rub notin' in my face," said Dennis Brock, a burly, bearded construction worker with a Confederate flag over his shoulder.

Brock said he had moved to Forsyth from West Atlanta to get away from blacks. "I done gone through this one time," he said.

The official pronouncement was that the march was peaceful. Civil rights organizations showed they could march through Forsyth County and not retreat.

But it was a joyless victory in an occupied country. By noon, Cumming was no longer a functioning community but an armed camp where deep hatred and deep commitment would face each other across a stern barrier of troops and police with the press as spectators.

Forsyth officials had asked local residents to stay home, and only a few ventured into town.

Williams, the Atlanta city councilman who had led the first march, said he would return to Forsyth County Sunday to attend church and later in the week to eat at local restaurants. He said he was not concerned about security.

"Jesus did not worry on Calvary, and Martin Luther King didn't worry in Memphis," he said.

The march began three hours later than planned as traffic jams delayed celebrity participants. It was not until 2 p.m. that the head of the column started down Old Buford Road behind a curtain of state troopers and Guardsmen.

By then, GBI agents had tried to pull the sting from the courthouse protesters by singling out and arresting several white supremacist leaders who had been haranguing the crowd through bullhorns.

Among the white demonstrators arrested were David Duke of Metairie, La., president of the National Association for the Advancement of White People, and one of his associates, Frank Shirley of Atlanta, who were charged with reckless conduct and blocking a state highway.

At times, the square was nearly silent.

When the head of the marching column appeared, it moved up the hill toward town at a slow, even pace, an

inexorable river of helmets and peace signs, raised hands and flashing visors.

The only sounds were the roar of helicopters overhead and the throbbing shouts of the counterdemonstrators, their Confederate flags rising and falling with their words.

As the leading ranks of marchers rounded the corner onto the square and the deep hatred of the crowd washed over them, the story of the day was written on their faces, a mixture of astonishment and fear, defiance and pity.

The protesters strained at the lines of police and Guardsmen, pouring out their invective in epithets now seldom heard publicly. The marchers stared back. Some raised their hands in "V" signs. A few took pictures as they walked. And then they were lost in the gathering crowd around the courthouse.

"We did not come to Forsyth County to scare you to death," Joseph Lowery, president of the Southern Christian Leadership Conference told the crowd. "We came to Forsyth to challenge you to live a life of decency."

Lowery then referred to the systematic ouster early this century of Forsyth County blacks in the wake of the rape and murder of a white woman and the lynching of her accused assailant. "In 1912, black people ran off and left some land as a good gesture," he said. "I believe that if you mean what you say, let's give those people money and and [sic] compensate them."

Speaking for local residents was Cumming Mayor Henry Ford Gravitt, who said, "I just want to welcome

you. This generation today can't help what happened 75 years ago. Let's start now and move forward."

"One week ago today, we had a group of people march here for brotherhood and a second group of people turned them away," said U.S. Sen. Sam [sic] Nunn (D-Ga.) "City officials, county officials want all of you to know that that second group does not speak for Forsyth County and does not speak for all of you."

Sen. Wyche Fowler urged the crowd to "eradicate from our hearts the prejudice that still lodges in America."

And John Lewis, a veteran of the civil rights movement who took Fowler's U.S. House seat, told the marchers, "I think by being here you are saying that we will not tolerate racism, not in Forsyth County, not in Georgia, not anywhere in this country."

By 4:30 p.m., the rally had ended. For two and a half hours, the crowd poured backed [sic] down the march route flanked by National Guardsmen as a State Patrol helicopter hovered overhead. Some 250 marchers were briefly stranded at a shopping center without buses, fearing the dark in Forsyth County.

APPENDIX G

Atlanta Constitution, February 4, 1987

**Forsyth County march security cost \$679,000
With \$325,800 for National Guard,
state picked up biggest part of tab**
By W. Stevens Ricks Staff Writer

State and local law enforcement agencies incurred an estimated \$679,148 in "extraordinary expenses" to provide security for the Jan. 24 "brotherhood" march in Forsyth County, according to figures released Tuesday by the governor's office.

The majority of the expenses were for state agency personnel, including an estimated \$325,800 for the Georgia Army National Guard.

Gov. Joe Frank Harris, in a news conference Tuesday, said "cost was never a factor" in his decision to provide security for the civil rights march that attracted about 20,000 marchers and 1,200 counterdemonstrators.

"You had a large group of people that were converging on a very small town that had inadequate law enforcement to handle that many people," the governor said. "It's the same thing you do in any kind of an emergency situation. You handle it and then worry about the cost of it later."

The largest share of the expenses was borne by the state's militia, whose soldiers earned \$267,900 in salary during their march duties. The remainder of the guard's expenses were: food, \$29,800, fuel, \$27,100; and medical expenses, \$1,000.

Col. Harry Heath, spokesman for the state Defense Department, said the costs of the guard must be paid

from state funds since the governor called the 1,700 soldiers out for a state-related function.

The Georgia Bureau of Investigation, which provided 185 agents for the march, reported estimated expenses of \$172,010, including \$78,980 for overtime payments to agents. Director Robbie Hamrick said his agency also had to buy some new riot gear for the march.

The Georgia State Patrol spent an estimated \$69,500 and the Department of Natural Resources, which lent a crew of conservation officers to the effort, predicted expenses of \$11,838.

Forsyth County Sheriff Wesley Walraven told the governor's office that the cost of his deputies' services and officers provided by neighboring jurisdictions could amount to \$100,000.

Included in those costs:

The Fulton County Sheriff's Department, which sent 50 deputies to the march, spent \$18,260, according to Lt. George Arndt. The sheriff had to buy riot helmets and jump suits for the occasion, Arndt said.

Capt. John Watson, a spokesman for the Roswell police, said that agency spent \$2,299 for the 14 people assigned to march.

Bob Hightower, Cobb County public safety director, estimated his department spent \$700 in salaries for three intelligence agents in Cumming to monitor "terrorist group activity."

Randy Camp, a spokesman for the Cobb County Sheriff's Department, said about 30 deputies were loaned to Forsyth County at an estimated cost of \$7,000 to \$8,500.

Atlanta police and Forsyth County officials still were tabulating their costs this week and declined to release any figures. Neither the Gwinnett County Sheriff's Department nor Fulton County Police Department incurred extra budgetary expenses despite sending a total of 52 officers, officials said.

Meanwhile, the coalition of civil rights groups led by Atlanta City Councilman Hosea Williams still was considering a response to civic officials' agreement to establish a biracial committee.

The coalition is demanding restitution to families of blacks "unlawfully" forced from their land in the county 75 years ago, federal investigations to see whether there is housing and employment discrimination, and police efforts to ensure the safety of blacks who wish to work, travel or live in Forsyth County.

Williams said a letter from Forsyth County officials agreeing to the committee "doesn't mention our demands one time" and fails to spell out what actions the biracial group would take. He said the coalition would respond in writing before the weekend.

APPENDIX H
FORSYTH COUNTY
ORDINANCE NUMBER 34
A RESOLUTION AND ORDINANCE
BY
THE BOARD OF COMMISSIONERS
OF FORSYTH COUNTY

A Resolution and Ordinance to provide for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes; to provide an effective date; and, for other purposes.

WHEREAS the General Assembly of the State of Georgia passed an Act (Ga. Laws 1979, page 4001) which amended the Act (Ga. Laws 1964, Ex. Sess., page 2225) which created the Board of Commissioners of Forsyth County, Georgia, which amendment delegated the police powers of the State of Georgia to the Board of Commissioners of Forsyth County, Georgia, with respect to persons and property situated outside the territorial limits of any municipality in Forsyth County, Georgia, and expressly authorized and empowered said Board of Commissioners to make such rules and regulations respecting persons or property and all other things affecting the good government of the County as it shall deem requisite and proper for the security, welfare, health, and convenience of the County and for the preservation of the peace and good order of the same, and made the violation of any such rule, regulation, ordinance or resolution a misdemeanor punishable by a fine not to exceed \$100.00

or by confinement in the County jail or correctional institution not to exceed three (3) months, either fine or imprisonment, or both, and made said violators amenable to the processes of the Superior Court of Forsyth County or the State Court of Forsyth County; and,

WHEREAS, the General Assembly of the State of Georgia passed an Act (Ga. Laws 1984, page 1086) adding to the Official Code of Georgia Section 36-1-20, which Section provides that the Board of Commissioners of Forsyth County, for the purpose of protecting and preserving the public health, safety, and welfare, is authorized to adopt ordinances for the governing and policing of the unincorporated areas of the County, violations of which ordinances may be punished by a fine not to exceed \$500.00 or imprisonment for 60 days, or both, and conferring jurisdiction over violations of such ordinances in the Magistrate Court of Forsyth County, in addition to any jurisdiction which might be in the Superior Court of Forsyth County or the State Court of Forsyth County; and,

WHEREAS private organizations and groups of private persons have from time to time sought to use public property and public roads within the jurisdiction of the Board of Commissioners of Forsyth County for private purposes; and,

WHEREAS such uses have included parades, assemblies, demonstrations, road closings, and other related activities; and,

WHEREAS it is in the public interest that such uses not interfere unduly with the rights of citizens not participating therein nor endanger the public safety nor obstruct the orderly flow of traffic; and,

WHEREAS it is requisite and proper for the security, welfare, health and convenience of the citizens of Forsyth County, Georgia, and for the preservation of the peace and good order of said County that rules and regulations relating to parades, assemblies, demonstrations, road closings, and other related activities in the unincorporated areas of the County be established and that the violation of said rules and regulations be designated as a misdemeanor punishable as provided by law; and

WHEREAS the cost of necessary and reasonable protection of persons participating in or observing said parades, assemblies, demonstrations, road closings and other related activities exceeds the usual and normal cost of law enforcement for which those participating should be held accountable and responsible; and

WHEREAS the said cost of additional protection can be estimated by the County Administrator; and

WHEREAS the said estimated cost should be paid into an escrow account established by the Forsyth County Board of Commissioners prior to any such parade, assembly, demonstration, road closing, or other related activity, with the additional protection to be paid out of the escrow account and any surplus refunded to those sponsoring the parade, assembly, demonstration, road closing, or other related activity; and

WHEREAS the County Administrator should be empowered to designate reasonable sites and set reasonable time schedules for the beginning and end of parades, assemblies, demonstrations, road closings, and other related activities where more than one is applied for; and

WHEREAS the County Administrator should be empowered to cancel the permit for any parade, assembly, demonstration, road closing, or other related activity where the participants fail to appear and begin within a reasonable time of the time scheduled, based on other activities permitted or based on the unreasonable interference with the public welfare, peace, safety, health, good order, and convenience to the general public; and

WHEREAS the County Administrator should be empowered to coordinate all of his duties and decisions under this Resolution and Ordinance with the official designated by the City of Cumming and charged with the same duties and decisions as to parades, assemblies, demonstrations, road closings, and other related activities;

NOW THEREFORE BE IT RESOLVED AND ORDAINED by the Board of Commissioners of Forsyth County, Georgia, and it is hereby resolved and ordained by the authority of the same, as follows:

INDEX

- Section 1 Definitions.
- Section 2 Permit required.
- Section 3 Application; fee.
- Section 4 Administration of ordinance.

- Section 5 Duties of administrator.
- Section 6 Duration of permit.
- Section 7 Procedure for issuance.
- Section 8 Violations and penalties.
- Section 9 Defense to prosecution.
- Section 10 Subsequent amendments; other fees.
- Section 11 Insurance and indemnity.
- Section 12 Separability.
- Section 13 Repealer provision.
- Section 14 Effective date.

Section 1. Definitions.

The following words where used in this Ordinance, unless the context requires otherwise, shall be deemed to have the following meanings:

(1) *Administrator.* The County Administrator shall be the administrator for the receipt and processing of applications for a permit for a private organization or group of private persons to hold a parade, assembly, demonstration, road closing, or other use of public property and roads for private purposes. The County Administrator may be assisted by other employees of the Board of Commissioners.

(2) *Private organization or group of private persons.* A private organization or group of persons shall be any firm, partnership, corporation, association, or group of individuals more than three in number, or their representatives, acting as a unit.

(3) *Private purpose.* A private purpose shall be any purpose not commanded or directed by statute, ordinance, or other regulation to be performed by the State, County, or other governmental entity.

Section 2. Permit required.

Every private organization or group of private persons who wishes to use public property or public roads in the unincorporated areas of Forsyth County for private purposes in holding a parade, assembly, demonstration, road closing, or other activity is hereby required to have a permit from the County for the privilege of engaging in any such activity within the County, unless such a permit is prohibited under State law or the activity is otherwise exempted by law, ordinance, or other valid regulation.

Section 3. Application; fee.

Every private organization or group of private persons required to procure a permit under the provisions of this Ordinance shall submit an application for the permit to the administrator, which application shall conform to the requirements of this section in addition to any other provisions of this Ordinance.

(1) Unless otherwise provided herein, each application shall be a written statement upon forms provided by the administrator and submitted within a reasonable time prior to the planned activity, for security checks, verifications, and arrangements to be made, the administrator to act within fifteen (15) days of the receipt of the completed application.

(2) Each application shall contain the following information:

- a. Name and home address of the applicant if an individual, or home office address if a corporation or partnership, and telephone where applicant maybe contacted;
- b. Date, time and place where the proposed activity is to be carried on, including proposed routes of passage of parades or other proceedings.
- c. Kind and class of activity to be carried on;
- d. Names and home addresses of the partners, if a partnership;
- e. Names and home addresses of the officers and directors, if a corporation;
- f. Any additional information which the administrator may find reasonably necessary to the fair administration of this Ordinance, which may include a complete record of all arrests and convictions against the applicant and every partner, officer or director of the applicant for violations of any and all laws and ordinances of the County, State or federal government, other than minor traffic violations.

(3) Each application shall be signed and sworn to by the applicant if an individual, or by a partner if a partnership, or by an officer if a corporation.

(4) All information furnished or secured under the authority of this Ordinance shall be kept in strict confidence by the County; shall not be subject to public inspection; and shall be

utilized by the officers of the County responsible for administering the provisions of this Ordinance.

(5) False statements in any application for a license shall be grounds for immediate revocation of the permit, denial of the application and/or denial of future applications.

(6) Any application, permit and registration fees, as fixed from time to time by the Board of Commissioners, required under this Ordinance, shall accompany the application.

Section 4. Administration.

The administrator shall administer and enforce the provisions of this Ordinance for the application for and issuance of permits under this Ordinance.

Section 5. Duties of Administrator.

The administrator, or an authorized representative, shall have, among others, the following duties:

(1) To prepare and provide the necessary forms for the application for a permit and for the submission of any required information as may be necessary to property administer and enforce the provisions of this Ordinance.

(2) To review the application for completeness, collect whatever fee and escrow deposit may be required; to designate sites and set time schedules where more than one activity shall occur on the same day; to coordinate with City of Cumming authorities on all matters concerning said activities; and, where appropriate, to

receive the approval of the Department of Transportation, State Highway Patrol, and the Sheriff, or any other necessary public officer, for the requested activity.

(3) To issue to the private organization or group of private persons a permit within a reasonable time of such approval. The administrator may, however, where he deems it appropriate, defer the issuance of a permit until the application for the same shall have been approved by the Board of Commissioners.

Section 7. Procedure for issuance.

(a) If any provision of this Ordinance provides for the review of an application for a permit by a County officer designated therein, the administrator shall forward a copy of the application to that officer. The officer charged with the duty of reviewing the application shall make a recommendation thereon, favorable or otherwise, and shall return the recommendation to the administrator after receiving a copy of the application.

(b) Upon the receipt of the recommendation of the reviewing officer as hereinabove provided, or upon the receipt of the application if no reviewing officer is designated, the administrator shall take action upon the recommendation and application, although, in a proper case, he may refer the same to the Board of Commissioners for consideration and action at its next public meeting.

(c) Unless some significant interference with the rights of non-participating citizens exists, or the orderly flow of traffic would be obstructed unreasonably, or the

public safety be endangered, or there be other unreasonable interference with the public welfare, peace, safety, health, good order, and convenience of the general public, the permit shall be granted.

Where more than one permit is sought for the same date, the administrator shall have authority to designate reasonable sites and set time schedules for the beginning and ending of the activity. The administrator shall have authority to cancel the permit where the activity fails to begin within a reasonable time after the time set for it to begin, based on other activities for which permits have been granted or based on the unreasonable interference caused by such delay with the public welfare, peace, safety, health, good order and convenience to the general public.

(d) The administrator shall issue a permit to the applicant therefor, which permit shall state the nature of the activity authorized and bear the date of issuance and the signature of the administrator.

Section 8. Violations and penalties.

(a) Criminal offenses.

(1) Violation of Ordinance.

Any person who violates or fails to comply with any provision of this Ordinance shall be guilty of a misdemeanor, and shall be amenable to the processes of the Superior Court of Forsyth County, the State Court of Forsyth County, or the Magistrate Court of Forsyth County.

(2) Punishment for violations.

Any person or organization convicted of a misdemeanor for the violation of the terms of this Ordinance shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00), or by confinement in the County jail or correctional institution not to exceed three (3) months, either fine or confinement, or both, in the discretion of the Superior Court or the State Court, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by confinement in the County jail or correctional institution not to exceed sixty (60) days, either fine or confinement, or both, in the discretion of the Magistrate Court.

(b) Civil penalties.

Any person, being an officer or employee of Forsyth County, who shall violate any provision of this Ordinance may be discharged from public service or employment or be subjected to such other disciplinary action as may be appropriate.

Section 9. Defense to prosecution.

It shall be a defense to any prosecution under this Ordinance for failing to obtain a permit before engaging in any activity described in this Ordinance that a permit has in fact been issued in the manner provided by law. It shall be presumed that no permit has been issued unless, at his trial, the accused produces in court a valid permit or a certified copy thereof.

Section 10. Subsequent amendments; other fees.

This Ordinance shall be subject to amendment or repeal, in whole or in part, at any time, and no amendment or repeal shall be construed to deny the right of the County to assess, levy and collect any permit fees prescribed. The payment of any permit fee herein provided for shall not be construed as prohibiting the assessment, levy or collection of additional permit fees upon the same person, firm or corporation.

Section 11. Insurance and Indemnity.

(a) Prior to the issuance of any permit under this Ordinance, the administrator may require the execution of an indemnification or "hold harmless" agreement in favor of the County, its officers and employees, for any liability arising from the issuance of the permit.

(b) Where it reasonably appears to the administrator, or upon advice to that effect by the Sheriff, that other than routine police involvement will be necessary to assure the peace and good order of the County if the permitted activity is carried out, the administrator may require as a condition precedent to the issuance of the permit, that a deposit be made with him, in an amount necessary to reimburse the County for the extraordinary expenses occasioned by the permitted activity. If the private organization be other than individuals, a permit will not issue without the making of the necessary deposit; individuals may be excused from such a deposit on account of indigence upon the execution under oath by each individual in the group applying for the permit of a

pauper's affidavit. Prior to the receipt of such an affidavit the administrator shall advise the applicant orally or in writing of the penalties for the execution of a false document.

Section 12. Separability.

If any Section, sub-section, sentence, clause, phrase or any portion of this Ordinance be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the Board of Commissioners to provide for separable and divisible parts and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

Section 13. Repealer provision.

Any resolution, ordinance, rule, regulation or other instruction previously approved by the Board of Commissioners or any other agency of Forsyth County which is inconsistent with the provisions of this Ordinance is repealed, revoked and shall be of no further force or effect upon the effective date of this Ordinance; but it is hereby provided that any resolution or law which may be applicable hereto and aid in carrying out and making effective the intent, purpose and provisions hereof, which shall be liberally construed to be in favor of Forsyth County, is hereby adopted as a part hereof.

Section 14. Effective date.

This Resolution and Ordinance shall be effective on the day of its adoption by the Board of Commissioners of Forsyth County.

This Resolution is hereby adopted this 27th day of January, 1987, the public health, safety and general welfare demanding it.

FORSYTH COUNTY ROAD
OF COMMISSIONERS

Attest: /s/ Betty Shadburn By: /s/ Leroy Hubbard
Clerk Chairman

/s/ David Gilbert
Commissioner

/s/ James Harrington, Jr.
Commissioner

/s/ Charles F. Welch
Commissioner

/s/ M. P. Bennett
Commissioner

A RESOLUTION AND ORDINANCE
BY
THE BOARD OF COMMISSIONERS OF FORSYTH
COUNTY

A Resolution and Ordinance to amend Ordinance Number 34, adopted January 27, 1987, providing for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes, by amending Section 7 to provide for appeal from denial of a permit; by amending Section 11 thereof pertaining to insurance and indemnity; to provide an effective date; and, for other purposes.

WHEREAS the Board of Commissioners of Forsyth County adopted Ordinance Number 34 of January 27, 1987, such ordinance providing for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes; and,

WHEREAS Ordinance Number 34 provides in Section 11 thereof for insurance and indemnity; and,

WHEREAS, in a case in the U. S. District Court for the Northern District of Georgia, serious constitutional objections were found to an ordinance imposing restraints on the exercise of the freedom of assembly; and,

WHEREAS the Board of Commissioners intends that no unreasonable or unconstitutional restraints be placed upon any citizen's right of assembly.

NOW THEREFORE BE IT RESOLVED AND ORDAINED by the Board of Commissioners of Forsyth County, Georgia, and it is hereby resolved and ordained by the authority of the same, as follows:

Section 1. Amendment of Index.

The Index of Ordinance Number 34 is amended by changing the title of Section 11 to "Deposits and Financial Responsibility."

Section 2. Amendment of Section 7.

Section 7 of Ordinance Number 34 is amended by adding thereto a new subsection (3), to provide as follows:

"(e) Any applicant whose application for a permit under this Ordinance is denied by the administrator may appeal such denial to the Board of Commissioners of Forsyth County, which shall consider such appeal at the regularly scheduled meeting next following the receipt of the applicant's appeal."

Section 3. Amendment of Section 11.

Section 11 of Ordinance Number 34 is amended by striking the present Section 11 and replacing it with the following:

Section 11. Deposits and Financial Responsibility.

"(a) Nothing in this Ordinance shall relieve any person or persons or organization from responsibility for any injuries or damages to persons or property, private or public, occasioned by their acts or omissions arising from the activity for which any permit under this Ordinance was issued.

"(b) After examining the application for a permit and receiving the advice and assistance of any other officer named herein, the administrator, after consideration of the facts reported in the application and any such advice and assistance from another public officer as herein provided, including prior experiences involving the same or similar activity, may require, as a condition precedent to the issuance of the permit, that a deposit be made with him, in an amount reasonably necessary to provide for, among other things, clean up after the event, special first aid or medical resources, security for vehicles at any staging area, special traffic considerations, temporary toilet facilities, and similar special and extraordinary expenses occasioned by the permitted activity.

"(c) If the private organization be other than individuals, a permit will not issue without the making of the necessary deposit; individuals may be excused from such a deposit on account of indigence upon the execution under oath, by each individual in the group applying for the permit, of a pauper's affidavit. Prior to the receipt of such an affidavit the administrator shall advise the applicant orally or in writing of the penalties for the execution of a false document."

Section 4. Forms.

(a) The form for a permit, applied for pursuant to the terms of Ordinance Number 34 is amended, on page 2 thereof, by deleting the question, "Have you read and signed the indemnity agreement?" and substituting in place thereof the question, "Do you understand that you may be held responsible for any damages or injuries to persons or property, private or public, occasioned by acts

or omissions attributable to you in the exercise of this permit?"

(b) The form for a permit, on page 2 thereof, is further amended by changing the word "the" to "any" in the question. "Have you paid the application fee?", so that when so amended the question shall read, "Have you paid any application fee?"

(c) In the next to last question in the form for a permit on page 2 thereof, the words "of law enforcement" are deleted.

Section 5. Effective date.

This Resolution and Ordinance shall be effective on the day of its adoption by the Board of Commissioners of Forsyth County.

This Resolution is hereby adopted this 23rd day of February, 1987, the public health, safety and general welfare demanding it.

FORSYTH COUNTY BOARD
OF COMMISSIONERS

Attest: Betty Shadburn
Clerk

By: /s/ Leroy Hubbard
Chairman

/s/ David Gilbert
Vice Chairman

/s/ James Harrington
Secretary

/s/ Charles F. Welch
Commissioner

/s/ M.P. Bennett
Commissioner

This is to certify that this is a true and correct copy of the amendment to Ordinance #34, adopted by the Forsyth County Board of Commissioners on February 23, 1987.

/s/ Betty Shadburn
Clerk

A RESOLUTION AND ORDINANCE
BY THE
BOARD OF COMMISSIONERS
OF FORSYTH COUNTY

A Resolution and Ordinance to amend Ordinance Number 34, adopted January 27, 1987, and amended February 23, 1987, providing for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes, by amending Section 3 to provide for administrative action within ten days of receipt of an application, a maximum license fee and exemptions for indigency; by amending Section 7 to provide for procedures for appeal from a denial of a permit and to prohibit certain activities on the Courthouse grounds at all times and to prohibit all activities on the Courthouse grounds at certain times; by amending Section 11 pertaining to deposits and financial responsibility; to provide an effective date; and, for other purposes.

WHEREAS the Board of Commissioners of Forsyth County adopted Ordinance Number 34 of January 27, 1987, and amended said Ordinance on February 23, 1987, such ordinance providing for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes; and,

WHEREAS Ordinance Number 34 provides in Section 3 for payment of application, permit and registration fee; and,

WHEREAS Ordinance Number 34 provides in Section 11 for deposits and financial responsibility; and,

WHEREAS the Board of Commissioners wishes to restrict interference with the administration of justice on the Forsyth County Courthouse grounds and to minimize the likelihood of interference with the rights of nonparticipating citizens residing in close proximity to the Forsyth County Courthouse; and,

WHEREAS in a case in the United States District Court for the Northern District of Georgia, in which Forsyth County and its Board of Commissioners is a party, serious constitutional objections have been raised to Ordinance Number 34, specifically the fee aspects of Section 3 and the deposit requirements of Section 11; and,

WHEREAS the Board of Commissioners intends that no unreasonable or unconstitutional restraints be placed upon any citizens' right of expression.

NOW THEREFORE BE IT RESOLVED AND ORDAINED by the Board of Commissioners of Forsyth County, Georgia, and it is hereby resolved and ordained by the authority of the same, as follows:

Section 1. Amendment of Index.

The index of Ordinance Number 34 is amended by changing the title of Section 11 to "Financial Responsibility."

Section 2. Amendment of Section 3.

Section 3 of Ordinance Number 34 is amended by changing the word and number "fifteen (15)" in subsection (1) to "ten (10)" so that subsection (1) now reads as follows:

"(1) Unless otherwise provided herein, each application shall be a written statement upon forms provided by the administrator and submitted within a reasonable time prior to the planned activity, for security checks, verifications, and arrangements to be made, the administrator to act within ten (10) days of the receipt of the completed application."

Section 3 of Ordinance Number 34 is further amended by striking the present subsection (6) and replacing it with the following:

"(6) Every private organization or group of private persons required to procure a permit under the provisions of this Ordinance shall pay in advance for such permit, for the use of the County, a sum not more than \$1,000.00 for each day such parade, procession, or open air public meeting shall take place. The Administrator shall adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed. In no event shall the Administrator calculate the amount of the permit fee by considering said fee as a revenue tax."

Section 3 of Ordinance Number 34 is further amended by adding after the aforementioned subsection (6) subsection (7) which shall read as follows:

"(7) If the private organization be other than individuals, a permit will not issue without the paying of the necessary fee; individuals may be excused from such a deposit on account of indigence upon the execution under oath, by each individual in the group applying for the permit, of a pauper's affidavit. Prior to the receipt of

such an affidavit the Administrator shall advise the applicant orally or in writing of the penalties for the execution of a false document."

Section 3. Amendment of Section 7.

Section 7 of Ordinance Number 34 is amended by adding the following paragraph after the first paragraph of subsection (c):

"As a condition to issuing a permit, the Administrator may require the private organization or group of private persons to provide personnel for trash clean-up of affected areas littered during the activity for which a permit is sought, the provision of first aid and medical resources if considered necessary by the administrator, proof of sufficient storage areas for a large influx of motor vehicles occasioned by the permitted activity, provision of temporary toilet facilities and other similar special and extraordinary items considered to be necessary for the permitted activity in the opinion of the Administrator, based on his past experience with such activities and his coordination with other County, City and State officials. In no event shall the Administrator require private organizations or groups of private persons to provide personnel for normal governmental functions, such as traffic control and police protection. If additional requirements are placed on private organizations or groups of private persons in accordance with this subparagraph, and those requirements are not met despite assurances by said private organization or group of private persons, then said failure to comply with the aforementioned requirements shall be grounds for denial of

any subsequent permit requested by said private organization or group of private persons and for any other claims for funds expended by the County for those extraordinary expenses agreed to but not provided by the applicant."

Section 7 of Ordinance Number 34 is further amended by striking the present subsection (e) of Section 7 and replacing it with the following:

"(e) Any applicant whose application for a permit under this Ordinance is denied by the Administrator may appeal such denial to the Board of Commissioners of Forsyth County, which shall consider such appeal at the regularly scheduled meeting next following the receipt of the applicant's appeal; if applicant has submitted said appeal by the day items are to be placed on the agenda in accordance with normal procedures of the Board of Commissioners of Forsyth County. In the event an applicant fails to appeal before the agenda is prepared, he may nevertheless be heard at the next regularly scheduled meeting of the Board of Commissioners if he has provided each of the Commissioners a copy of the application which he submitted to the Administrator and the reasons given by the Administrator for the denial not less than twenty four (24) hours prior to the regularly scheduled meeting of the Board of Commissioners. The Board of Commissioners shall consider the appeal by requiring the Administrator to explain why the permit was denied. Unless the Administrator can show significant interference with the rights of non-participating citizens; an unreasonable obstruction of the orderly flow of traffic; a clear and present endangerment to citizens of Forsyth County; other specific unreasonable interference with the

public welfare, peace, safety, health, good order, and convenience of the general public, or failure to comply with the dictates of ordinance Number 34, the permit shall be granted."

Section 7 of Ordinance Number 34 is further amended by adding thereto a new subsection (f) to provide as follows:

"(f) In no event shall any private organization or group of private persons be permitted to bring signs, banners, posters, leaflets, handbills or any other printed material of any size or shape containing any message intended to influence any judge, juror, witness, or court officer, in the discharge of his duty at the Forsyth County Courthouse and the grounds upon which it stands. No private organization or group of private persons may use the Forsyth County Courthouse grounds for private purposes in holding a parade, assembly, demonstration, or other activity on any non-holiday weekday, prior to 8:00 a.m. or after 5:00 p.m. on any Saturday or public holiday, or prior to 1:00 p.m. nor after 5:00 p.m. on any Sunday."

Section 3. Amendment of Section 11.

Section 11 of Ordinance Number 34 is amended by eliminating the words "deposits and" from the title and by eliminating the subparagraph designation "(a)" and all of subsections (b) and (c).

Section 4. Effective Date.

This resolution and Ordinance shall be effective on the day of its adoption by the Board of Commissioners of Forsyth County.

This resolution is hereby adopted this 8th day of June, 1987, the public health, safety and general welfare demanding it.

FORSYTH COUNTY BOARD
OF COMMISSIONERS
By: /s/ Leroy Hubbard
Attest: Betty Shadburn Chairman
Clerk

/s/ David Gilbert
Commissioner

/s/ James Harrington
Commissioner

/s/ M.P. Bennett
Commissioner

/s/ Charles F. Welch
Commissioner

This is to certify that this is a true and correct copy of Ordinance #34, Amendment #2, adopted by the Forsyth County Board of Commissioners on June 8, 1987.

/s/ Betty Shadburn
Betty Shadburn, Clerk

ORDINANCE #48
A RESOLUTION AND ORDINANCE
BY THE
BOARD OF COMMISSIONERS
OF
FORSYTH COUNTY, GEORGIA

A resolution and ordinance to amend Ordinance Number 34, adopted January 27, 1987, and amended February 23, 1987, and June 8, 1987, providing for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes, by amending Section 3 to provide a time before which applications will not be accepted; to provide an effective date; and, for other purposes.

WHEREAS, the Board of Commissioners of Forsyth County adopted Ordinance Number 34 of January 27, 1987, such ordinance providing for the issuance of permits for parades, assemblies, demonstrations, road closings, and other uses of public property and roads by private organizations and groups of private persons for private purposes; and,

WHEREAS, there is no specific time limitation in that Ordinance providing for a time before which applications for permits will not be accepted; and,

WHEREAS, the Board of Commissioners intends that proper consideration be given to all applications for permits but that those applications can only be properly considered if they are made reasonably close to the time in which an activity requiring a permit is to occur; and,

WHEREAS, the Board of Commissioners finds that without a specific restriction on the time in which applications may be submitted for consideration the possibility of abuse of the permit procedure may occur by applications for permits for activities being submitted years in advance,

NOW THEREFORE BE IT RESOLVED AND ORDAINED by the Board of Commissioners of Forsyth County, Georgia, and it is hereby resolved and ordained by the authority of the same, as follows:

Section 1. Amendment of Section 3.

Section 3 of Ordinance Number 34 is amended by adding at the end of Subsection (1) the following sentence: "The phrase 'reasonable time prior to the planned activity' shall be construed to mean not more than sixty (60) days prior to the planned activity."

Section 2. Effective Date.

This Resolution and Ordinance shall be effective on the day of its adoption by the Board of Commissioners of Forsyth County.

This Resolution is hereby adopted this 25 day of April, 1987, the public health, safety and general welfare demanding it.

FORSYTH COUNTY BOARD
OF COMMISSIONERS

By: /s/ Charles F. Welch

Attest: Betty Shadburn
Clerk

/s/ Leroy Hubbard
Commissioner

/s/ M.P. Bennett
Commissioner

/s/ James Harrington
Commissioner

/s/ David Gilbert
Commissioner

This is to certify that this is a true and correct copy of the amendment to Ordinance #48, adopted by the Forsyth County Board of Commissioners on April 25, 1987 as Amendment #3 to Ordinance #34.

/s/ Betty Shadburn
Clerk

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
GEORGIA GAINESVILLE DIVISION

FORSYTH COUNTY DEFENSE	:	CIVIL
LEAGUE, and MRS. BEVERLY	:	NO. C-87-31-G
WATTS	:	FILED
VERSUS	:	MAR 13 1987
CITY OF CUMMING and	:	
FORSYTH COUNTY	:	

ORDER

Pending before the court in the captioned case is a motion for injunction. The court ruled upon that matter in open court on Thursday, March 12, 1987. For the reasons stated during the ruling from the bench, and in a written opinion to be filed in this case, the court has granted in part and denied in part the plaintiff's motion for an injunction. The injunction as to the City of Cumming is hereby denied for the reasons stated by the court from the bench. Likewise, for the reasons stated, the injunction as it relates to Forsyth County, Georgia, has been granted.

Forsyth County, its officers, agents, servants, employees, attorneys and all other persons in active concert or participation with them, are hereby enjoined and restrained from preventing a public rally and the exercise of speech by the plaintiff and those persons engaged with her at such rally on the grounds of the Forsyth County Courthouse in

Cumming, Georgia on Saturday, March 14, 1987. The defendant Forsyth County shall allow such rally, assembly and speeches for a period not to exceed two hours between 3:00 and 5:00 p.m. on Saturday, March 14, 1987.

This injunction does not prevent or preclude the defendants and properly designated law enforcement officers from maintaining law and order and enforcing the laws of the State of Georgia, including traffic control on the public streets in the City of Cumming, including the streets surrounding the courthouse.

This injunction does not include the right to amplify speeches and/or other sounds to such a degree as to disturb the residents and visitors of the convalescent home across the street from the courthouse and/or the business and other facilities surrounding the Forsyth County courthouse.

The plaintiff and her supporters and participants have been denied the right to conduct a parade as requested in this law suit; however, the right of assembly and speeches on the courthouse grounds is to be fully afforded to them in accordance with the terms of this order.

IT IS SO ORDERED this 13th day of March, 1987.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

APPENDIX J
BULLETIN OF
Forsyth County Defense League
"ALL THE WAY"

JULY 9, 1987

NEW CHARTER

On June 26, 1987, The Forsyth County Defense League received its new Charter from the Nationalist Movement as an independent affiliate. We now enjoy the protections used by our adversaries . . . and we shall use our rights to advance our freedom!

ILLEGALS

Illegal aliens reportedly are in or around Forsyth County. If you know where any of these undesirables live or who they work for, pass along this information to us.

TOP COUNTY IN THE WORLD

Forsyth County, Georgia, is now the best-known county in the world. Because red-white-and-blue working people dared to defend their rights here. Ours is the voice heard, round the earth! A new campaign has begun to mail to potential supporters. It costs a lot for postage, but its little compared to the price Nathan Hale, John Paul Jones and Patrick Henry paid for liberty.

T-SHIRTS

T-shirts promised by manufacturer two weeks ago have been delayed again. New producer should have then ready shortly. Orders yours now and wear it proudly (4-colors on olive background. Super-looking).

BI-RACIAL RASCALS ON RUN

The Mulatto (Bi-Racial) Committee says it will wind up its dirty dealing soon. It does not want to credit the FCDL with putting it out of business, but we all know who are the main opponents of Hosea Williams and his gang. And we know who welcomed the black power oppressors to Forsyth County. By the way, Mayor Gravitt, where's that apology for calling patriots "white trash"?

ANOTHER LEGAL VICTORY

Forsyth County tried again (and lost) to have the FCDL suit against it thrown out of federal court. County lawyer Bob Stubbs told Judge William O'Kelley that Forsyth County had reached an agreement with the ACLU to end the suit. Only he didn't ask the people. The ACLU doesn't vote here. Work here. Or live here. How 'bout minding the words, "We the People," Mr. Commissioner?

HARDING WINS FIRST ROUND

Your Chairman, Jim Harding, went head-to-head with left-wing lawyer Morris Dees here at the Courthouse recently. And didn't blink or back down. Dees is trying to sue patriots

who opposed invaders' January 17th demands to confiscate ~~Forsyth~~ County land and give it to NAACP-types. No way, Hosea!

DEFEAT DEES

Morris Dees, who was Gary Hart's chief fund-raiser, has been attacking your League on national television. The harder his attacks, the more friends for us! Don't forget the new slogan (and mean it when you shout it): "Defeat Dees" - "Free Forsyth".

NEW PARADE

Plans are in the works for a Labor Day Parade and Rally in Cumming. It will be our "Majority Jubilee." Plan to celebrate your victory over tyranny. Can you be a parade marshal? We need your name and support.

POSTERS

A spectacular poster is being designed to picture those arrested for protesting the Black Power Invasion, together with your own Nationalist leaders. Let us know if you would like to be pictured and send a photo.

KNOW YOUR RIGHTS

Your FCDL is publishing information on how to qualify to run for office and to protect your rights. While we are non-partisan and non-political, we want you to know what you can do to change things for the better. Ask for these facts and consider being a candidate, yourself.

BOOSTERS' BANQUET

Like to eat? Then you will want to attend the Banquet honoring those Sons of Liberty acquitted or charged for defending the American Way of Life. Make your reservations soon. The date will be announced. Nobody loves the Constitution more than you. Nobody serves the nation better than you.

DISSIDENTS TURNED BACK

A back-biter and his handful of former League members tried to halt your progress last month. They convinced themselves they could stop your growth throughout the nation. Instead, these Weeping Willows and Nervous Nellies encountered the largest turnout yet for your Courthouse meetings. And they were voted out overwhelmingly.

LUNDIN, SHIRLEY LEAD THE WAY

Swedish Nationalist and Youth Leader, Dennis Lundin, addressed the League at the last meeting. He came just to thank Forsyth County for standing up for freedom . . . and he called for unity of nationalists of Northern Europe, America and South Africa. Frank Shirley pounded our adversaries with his usual thrilling oratory. Don't forget, League meetings are each second Thursday at the Forsyth County Courthouse, 7:30 PM sharp.

HEADQUARTERS OR BUST

We must have a headquarters in the Atlanta area. Can you donate a commercial building, house or anything? It will be staffed and run professionally, as soon as

possible. Can you give some land? Freedom is not free . . . the price must be paid! We also need staff people. Can you give a few hours or days a week? Do you have room for speakers, visitors or supporters visiting our meetings to stay? Let us know now.

NEWSLETTER IN WORKS

We need help in putting out the new news letter. Membership cards and emblems are also coming . . . please be patient. And pay your dues. Send your pledge. Also planned are leather goods with the Crosstar Victory emblem and Crosstar flags of the Movement. A booklist will be published soon, too, for your advancement.

YOUTH CORPS

New Youth Corps leadership will be announced shortly. If you are a youth member or student, join this important force for the New America. "Nationalism Now!"

NAME _____ ADDRESS _____

CITY _____ STATE _____ ZIP _____ PHONE _____

I need _____ Comments _____

JOIN & SUPPORT YOUR:

Forsyth County Defense League
PO Box 1321 / Cumming, Georgia 30130

APPENDIX K

IN THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

NO. 88-8093

FORSYTH COUNTY DEFENSE
LEAGUE

VS.
FORSYTH COUNTY, GEORGIA

APPELLANT

APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF GEORGIA GAINESVILLE DIVISION

BRIEF OF APPELLANT
FORSYTH COUNTY DEFENSE LEAGUE

RICHARD BARRETT
PO Box 6700
Jackson MS 39212
(601) 373-4400

ATTORNEY FOR APPELLANT

* * *

STATEMENT OF THE CASE

On March 9, 1987, the League and Mrs. Beverly Watts filed suit in the U.S. District Court, Northern District of Georgia, Gainesville Division [R. §1], against the City of Cumming and Forsyth County, Georgia, under 42 U.S.C. §§1983, 1985 and 1988 to redress denial of free speech and assembly. A motion for a temporary restraining order [R. §3] under Rule 65, F.R.C.P. was also filed.

On March 13, 1987, Judge O'Kelley granted relief to the League and Mrs. Watts [R. §§ 6, 7] enjoining the County from interfering with the conduct of a rally by the League and Mrs. Watts. On October 5, 1987, the parties dismissed the City without prejudice by stipulation [R. §18]. On October 5, 1987, the Court dismissed the action as moot, except as to attorney fees [R. §19].

On October 17, 1987, the League filed its motion for an additional thirty days within which to file its motion for attorney fees [R. §20]. On October 23, 1988, the County filed an objection [R. §21]. On October 28, 1988, the League filed its response to the County's objection [R. §23] and, also, its motion for attorney fees [R. V. 2 §22].

On November 16, 1988, Judge O'Kelley denied the League's motion for attorney fees as not timely filed and dismissed the League's motion to extend time as moot [R. §25]. On November 23, 1987, the League and Mrs. Watts requested reconsideration of and relief from Judge O'Kelley's November 16th order [R. §26].

On December 6, 1987, the League moved to amend to reflect its corporate status under its parent, The Nationalist

Movement, a Georgia non-profit corporation, and to secure a declaration of pauper status [R. §27].

On January 19, 1988, Judge O'Kelley denied reconsideration of or relief from his November 16th order, denied as moot the request to reflect the corporate status of the League and denied as not ripe the declaration of pauper status [R. §32].

On February 6, 1988, the League appealed [R. §34], also re-submitting its motion for pauper status [R. §35]. On February 25, 1988, Judge O'Kelley denied the pauper status [R. §38] on grounds that finances of individual League members were not disclosed.

On February 29, 1988, the League filed its motion in this Court, pursuant to Rule 24(a), F.R.A.P., requesting pauper status, also objecting to disclosure of its membership. On March 4, 1988, the County filed a response contending that League's parent corporation had not submitted an affidavit of

* * *

APPENDIX L

Atlanta Journal and Constitution, March 15, 1987

Cumming rally peaceful

'White rights' runs up against counterprotest

By Ron Taylor Staff Writer

CUMMING, Ga. — White supremacists staging a "Majority Rights" Freedom Rally" here Saturday were outnumbered by members of local church groups who stood across the street and held up red-lettered signs saying "Go Home."

Forsyth County Sheriff Wesley Walraven estimated the number of participants in the "white rights" rally at about 125. But the white church members who staged a brief counterprotest numbered about 200, he said.

To maintain the peace, Walraven had stationed 11 patrol cars in front of the courthouse square where the rally was held. Also on hand were nearly 100 helmeted deputies, state patrolmen, GBI agents and local policemen, who lined three sides of the square.

No incidents of violence occurred, the sheriff said, and the only arrest made was not directly related to the protest. A motorist was arrested on a street next to the courthouse and charged with driving under the influence, possession of a weapon by a convicted felon and parole violation, according to Walraven.

"We're kind of tired of all this," said Bob Ross, referring to a string of racial protests and counterdemonstrations in the county over the past two months.

Ross came to the counterdemonstration with his wife, Teresa, and their two children Amanda, 2, and Brooks, 5.

They were among forces rallied by representatives of 15 Forsyth County churches.

"The pastors here have taken a stand and asked the members of their churches to stand up for Jesus and what's right," said George Dalusky, a member of Cumming United Methodist Church.

Most of the church members had left, however, by the time leaders of the "white rights" rally had begun to stir their forces into chants of "No way, Hosea" and other cries against leaders of previous racial protests here.

Hosea Williams, an Atlanta city councilman and civil rights veteran, led the first protest here in January, which ended in violence when Ku Klux Klansmen and their sympathizers began hurling rocks and bottles at the marchers.

A week later, about 20,000 marchers came to the virtually all-white county to protest that attack.

Leaders of Saturday's rally directed their speeches at a multitude of working-class fears, conjuring up images of an America overrun by foreign immigrants and doomed to suppression by communists.

"Our borders are being inundated by colored immigration," said Frank Shirley, information director for the Forsyth County Defense League, which sponsored the rally. "What is needed is to mine the Mexican border. What is needed is to send an army to the border, and anybody who comes across should be treated as spies."

The crowd responded with cheers and upraised fists.

Shirley also lambasted the local Chamber of Commerce, which had condemned the white supremacists,

calling its members "a bunch of rich liberals and race traders."

Also appearing at the rally was Mississippi attorney Richard Barrett, who called for abolition of the county's biracial commission, describing it as a tool of "invaders."

Walraven said he would rather have spent Saturday fishing. "My hope is that these people coming here will begin to just say what they want to say and go home and not mess up our Saturdays anymore," the sheriff said.

APPENDIX M

Atlanta Journal and Constitution, January 17, 1988

175 march peaceably in Forsyth

By Monte Plott and Sandra McIntosh Staff Writers

About 175 civil rights marchers accomplished Saturday what a similar group couldn't do a year ago - they walked unhindered down a Forsyth County road.

Law enforcement officers outnumbered marchers by a ratio of 2-to-1, and counter-demonstrators were kept off the two-mile march route to prevent a recurrence of violence that halted a "brotherhood" march in the predominantly white county last Jan. 17.

That led to the biggest civil rights march of the decade a week later.

This time, there were no rocks or bottles thrown at marchers, and few spectators on hand. There were no arrests, authorities said.

"I want to congratulate the state police and Forsyth County Sheriff Wesley Walraven," said Atlanta City Councilman Hosea Williams, who organized the march to commemorate last year's demonstration. "This was a beautiful march without a bit of trouble, and I know we have them to thank for that."

Police saw to it ahead of time that most of the land along the route was posted off limits to any spectators. The only ones to witness the march were a few people who came out of their houses, the army of more than 400 officers from local, state and federal agencies, and a crowd of journalists about equal in size to the racially mixed group marching.

At the first march last January, police were overwhelmed when angry whites threw rocks and bottles at a group of 75 civil rights marchers. But this year, "we wanted to make sure we had no possible places where demonstrators could gather," Walraven said. "We set out to prevent a violent demonstration."

To do that, Walraven said state and local officials met with residents along the parade route, almost all of whom agreed to turn over a limited power of attorney to the Georgia Bureau of Investigation (GBI) for the day.

That authority, said GBI Director Robbie Hamrick, gave officials power to arrest anyone who trespassed on private property during the march.

A group of white extremists - including representatives of the Ku Klux Klan and the Crusade Against Corruption - gathered outside a small market across from barricades police erected in front of the march's starting point. Although some of the extremists waved Confederate battle flags as the buses drove into the march area and police watched warily, there were no incidents.

Another group of about 68 flag-waving counter-demonstrators - including two men wearing Nazi garb - rallied on a privately owned lot, waiting under the gaze of about a dozen officers for marchers they never saw.

Mississippi Lawyer Richard Barrett, an organizer of the white supremacist Forsyth County Defense League, told the crowd that the three buses taking Williams' marchers home in the afternoon would be coming right by them.

"Hold your tempers, but not your tongues," Barrett urged his followers. But there was no confrontation – the group was more than a quarter mile from the actual march route, and buses carrying the marchers left the area on a different route.

Williams and his followers said they had come back to Forsyth County to finish last year's march – despite a second march last Jan. 24 that brought 20,000 protesters to the county and put a national spotlight on Forsyth County.

"This is for the younger kids," said Jacquelyn Harris of Atlanta. "Hopefully one day they won't have to go through what we did."

"They have made some improvements in Forsyth County since last year," Williams said. "but it isn't enough, and we're here to tell them if they don't do right, we'll return with 20,000 marchers again."

March leaders continually urged their singing and chanting followers to remain calm and non-violent. The march captains even collected from participants such items as pen knives, nail files, large belt buckles and a corkscrew.

The group came prepared with a truckload of signs, many proclaiming the march's slogan: "Redeeming the Soul of Forsyth." Others said "We are back to complete what we started a year ago," "It is time for Forsyth to join America" and "Ain't gonna let nobody turn us around."

Officials began the groundwork early for securing the area.

By 8 a.m. Saturday, police had already sealed off the entrances to the march, and officers were combing the wooded hills along the route.

As the marchers drove through heavily manned police barricades early Saturday, they were met by rows of officers from the Georgia State Patrol, the Department of Transportation, the Department of Natural Resources (DNR), the Department of Corrections and the GBI. Federal Department of Justice officials were also on hand, as was virtually the entire Forsyth County Sheriff's Department and a small group from the county fire department.

DNR officers on small four-wheel, all-terrain vehicles led the band of marchers along the route. The group was flanked by helmeted State Patrol officers, the sun glinting off their face plates.

Two helicopters circled continuously, checking on the marchers and looking for movement along the route.

Other officers and reporters walked with the marchers along the route that wound through a hilly wooded area dotted with ponds and pastures. The only others to watch were residents of the houses and trailers scattered along the parade route.

APPENDIX N

Atlanta Journal and Constitution, January 24, 1988

65 show up for march in Cumming
By Sandra McIntosh Staff Writer

CUMMING - About 65 demonstrators, 40 of them draped in Ku Klux Klan robes, marched without incident Saturday from the Forsyth County High School to the County Courthouse for a 1 1/2-hour "white power" rally.

Richard Barrett, a Jackson, Miss., lawyer and a founder of the Forsyth County Defense League - a group dedicated to keeping blacks out of the county - led the group along the one-mile route in downtown Cumming.

It was a response to a march by about 175 people led through the virtually all-white county last Saturday by Atlanta City Councilman Hosea Williams. That march commemorated events that propelled Forsyth County to international prominence a year ago, when a small civil rights demonstration was broken up by white supremacists, resulting in a march by 20,000 people - the largest civil rights march of the decade - a week later.

"It's time for the white people of America to stand up and tell the blacks that we will not allow them to run this country and we will not allow them to run us," Barrett shouted over his bullhorn Saturday as the marchers prepared to assemble.

The half-hour march went without incident, officers said, although there was a brief confrontation with police when the marchers reached the courthouse. Police had cordoned off the parking spaces in front of the courthouse for the demonstration, but the marchers demanded

the entire street be closed, shouting "You closed it for Hosea, now close it for us."

Cumming Police Chief Wayne Lindsay called for State Patrol backup, but the demonstrators returned to the parking area before troopers arrived. Lindsey said he couldn't allow the marchers in the street because they had not requested it in their permit.

Police estimated the crowd at the courthouse at slightly less than 100. About 45 police officers, 20 from the state, were on hand.

There were few spectators. Joe Caldwell of Hall County and two of his friends sat in a pickup watching the demonstrators. The three were on dinner break and "came out to see the fool show," Caldwell said.

"All this does is give everyone up here a bunch of bad publicity," Caldwell said, "It's ridiculous."

But Bertie Collins, whose husband left the sidelines to join the marchers, said she hoped the demonstrators would help keep blacks out of the county.

"I think the blacks ought to stay in their place," Mrs. Collins said. "We don't go down to Atlanta and bother them, so why should they come up here and bother us?"

The marchers carried signs and banners with such slogans as "The Black Man's Dream Is the White Man's Death," "No King Over Us," and "Majority Not Minority Rule."

Buck Jones, the city assistant chief of police, said not many of the marchers were from the county.

"Very few of these people are local," he said, nodding toward the marchers. "I don't recognize more than 10 or 15 of them."

A quick scan of the high school parking lot showed license plates from Minnesota, Alabama, South Carolina, Illinois and Mississippi. Only four of 34 vehicles in the school parking lot carried Forsyth County tags.

After the march, Chief Lindsey and a spokesman for the GBI said there were no arrests and no injuries.

Johnny and Maria Fonticiella, who have lived in Cumming for two years and in the United States for six, seemed confused by the demonstration.

"What do they want," Mrs. Fonticiella, a native of Caracas, Venezuela, asked a bystander. When it was explained to the couple, Mr. Fonticiella shook his head.

"In this day and age, in almost the 21st century, this is stupid," he said, as his wife added, "In our country we have all colors living together, and we don't have this."

APPENDIX O

5/11/88 Review letter from Beau Stubbs dated 5/9/88 to Joe McNamee in reference to postponement of Assembly Application.

Forsyth Co.
DEFENDANT'S
EXHIBIT
FC-2 ADMITTED
C89-06-WCO

5/12/88 Review letter from Joe McNamee dated 5/9/88 in reference to appeal to Board of Commissioners.

6/07/88 Reviewed letter from Joe McNamee dated 6/3/88 to Ralph Roberts in reference to denial (postponement) of permit for assembly and request for appeal of same.

6/14/88 Dictated letter to National Movement relative to postponement of Assembly permit.

6/20/88 Reviewed letter to me dated 6/16/88 from Howard Weatherspoon in reference to postponement of permit for Assembly.

6/21/88 Dictated memo to Beau Stubbs in reference to reply to National Movement relative to postponement of Assembly permit.

6/28/88 Dictated memo to Board of Commissioners in reference to denial of the application for Assembly (or postponement of application).

6/28/88 Reviewed letter from Beau Stubbs dated 6/27/88 to Howard Weatherspoon in reference to the language in our Ordinance relative to application being submitted no earlier than 60 days prior to the scheduled event.

App. 148

11/15/88 Reviewed letter to me and Commissioners dated 11/11/88 from Scott Weaver in reference to review of application and change of time for Assembly.

11/18/88 Conference with Beau Stubbs in reference to proper procedures to follow relative to a request from Scott Weaver requesting changes in application as submitted.

11/23/88 Reviewed assembly application as submitted by Joe McNamee dated 4/4/88.

11/29/88 Dictated letter to Scott Weaver as a reply to his letter dated 11/11/88, in which I returned the application in order for him to make the changes as outlined in his letter. This letter was mailed certified mail to The National Movement, P. O. Box 1321, Cumming, Ga. 30130.

12/15/88 Telephone call from Richard Barrett in reference to him not receiving my response of 11/29/88 relative to the change in time which The National Movement requested. I directed Howard to go to the post office to inquire about the certified letter to The National Movement dated 11/29/88. The Post Office advised him that the letter had not been signed for and remained in P. O. Box 1321. Howard then retrieved the letter from the Post Office and we mailed same to P. O. Box 6700, Jackson, Mississippi (certified mail). The letter was signed for in Jackson, Mississippi on 12/19/88.

12/15/88 Reviewed letter from Scott Weaver dated 12/11/88 in reference to the above subject.

12/20/88 Reviewed letter from Richard Barrett Dated 12/17/88 in reference to our telephone conversation of 12/15/88 and outlining his desires to

App. 149

reserve the courthouse grounds from 8:00 a.m. until 11:00 a.m. on 1/21/89.

12/22/88 Meeting with Gerald Blackburn in reference to the hours requested (8:00 a.m.-11:00 a.m.) in Barrett's letter dated 12/17/88 and discussing the time and permit as issued by the City of Cumming. (Ed Ledford present at meeting).

12/22/88 Received and reviewed permit application dated 12/19/88 together with letter from Richard Barrett dated same date. Reviewed Parade & Assembly Ordinance and Amendments.

12/22/88 Telephone Conference with Beau Stubbs in reference to the time change request and advising him of the conditions of the permit as issued by the City of Cumming.

12/28/88 Conference with Sheriff Walraven and conference with Gerald Blackburn in reference to coordination agreement of county permit.

12/29/88 Reviewed letter to Gerald Blackburn from Richard Barrett dated 12/26/88 relative to amendment of City permit to 9:00 a.m. rather than 1:00 p.m.

12/29/88 Meeting with Beau Stubbs in reference to issuance of permit to The Nationalist Movement for an assembly on 1/21/89.

12/30/88 Issued permit and dictated letter to Richard Barrett outlining the conditions contained in the permit and mailed same by certified mail.

12/30/88 Conference with Sheriff Wesley Walraven in reference to the permit as issued to the Nationalist Movement this date.

1/03/89 Reviewed letter to Gerald Blackburn dated 12/28/88 in reference to Appeal of the 1:00

p.m. in the City Permit (letter from Richard Barrett).

1/04/89 Reviewed letters from Richard Barrett dated 12/30/88 to me, Gerald Blackburn, and the Forsyth County Board of Education relative to Parade plans, amendments and alternative plans for holding the parade and rally on 1/21/89.

1/04/89 Telephone conference with Gerald Blackburn relative to Barrett's letter of 12/30/88.

1/04/89 Received call from Beau Stubbs advising me that he had received a call from Richard Barrett stating he was appealing my decision as to the \$100.00 application fee. Beau advised me to place his appeal on the Board of Commissioners' Agenda for the meeting of 1/9/89. I placed same on Agenda for 1/9/89.

1/09/89 Appeal of Richard Barrett denied by Board of Commissioners.

1/11/89 Dictated letter to Richard Barrett advising him that his appeal was denied by the Board of Commissioners on 1/9/89, and that the \$100.00 application fee stands.

APPENDIX P

A meeting of the Forsyth County Defense League was held on March 11, 1987, at the home of Junior and Martha Staton, for the purpose of making the League official and for preparation of their first march and rally.

At 8:25 P.M., the meeting was called to order by Mr. Richard Barrett (the League's acting attorney) with invocation give by Rev. E. S. Hall, Mr. Barrett made introductions of the organizers of the League: Mr. Mark Watts, Mrs. Beverly Watts, and Mr. Frank Shirley.

There was discussion of the court meeting held in Gainesville, Ga., at 9:00 A.M., on March 11, 1987, requesting the request be granted and permit issued to the Forsyth County Defense League to allow a march and rally at the Forsyth County Courthouse. It was agreed that the League would make no compromise but insist on the use of the courthouse for the rally.

At 8:50 P.M., the Forsyth County Defense League was officially adopted as an organization and the first regular meeting was called to order with Rev. E. S. Hall presiding for election of temporary officers to serve until the organization is fully established to elect permanent officers by all members.

PRESIDENT – Mart Watts was nominated by Jerry Lord and seconded by Frank Shirley. There were no other nominations. Mark Watts was elected by unanimous vote.

VICE-PRESIDENT – Jerry Lord was nominated by Frank Shirley and seconded by Junior Staton. There were no other nominations. Jerry Lord was elected by unanimous vote.

TREASURER - Deborah Lord was nominated by Mark Watts. There were no other nominations. Deborah Lord was elected by unanimous vote.

SECRETARY - Betty Brock was nominated by Beverly Watts. There were no other nominations. Betty Brock was elected by unanimous vote.

SECURITY CHIEF - Edward Frix was nominated by Mark Watts. There were no other nominations. Edward Frix was elected by unanimous vote.

CHAPLAIN - Junior Staton was nominated by Richard Barrett. There were no other nominations. Junior Staton was elected by unanimous vote.

NATIONAL AND LEGAL SPOKESMAN - Richard Barrett was nominated by Mark Watts. There were no other nominations. Richard Barrett was elected by unanimous vote.

YOUTH COORDINATOR - Lee Bates was nominated by Richard Barrett. There were no other nominations. Lee Bates was elected by unanimous vote.

DIRECTOR OF INFORMATION - Frank Shirley was nominated by Mark Watts. There were no other nominations. Frank Shirley was elected by unanimous vote.

Each elected officer gave a statement to the organization.

Mark Watts suggested the organization elect Rev. E. S. Hall as an Honorary Chaplin, because he is well-familiarized with the Bible and has been working toward the same goals as the Forsyth County Defense League for

58 years. Rev. Hall was elected by unanimous vote. He made his statement to the group.

Richard Barrett presided over the remainder of the meeting. He suggested a set of by-laws be adopted by the League. He said he would make a draft of by-laws and have them ready for discussion, revision, and/or approval by the next regular meeting of the Forsyth County Defense League.

It was voted that the regular meetings of the Forsyth County Defense League be held on the first Tuesday of each month at 7:30 P.M. in the homes of volunteers until an official meeting place could be found. The next meeting will be April 7, 1987, at 7:30 P.M., at the home of Junior Staton. The May meeting place will be decided at the April meeting.

Richard Barrett presented the League with a copy of a petition to Governor Joe Frank Harris. The petition was accepted by unanimous vote as an official document of the Forsyth County Defense League.

Barrett made the following suggestions:

- (1) The League march on March 14, 1987, if the Judge approves or wait if the Judge so declares. There was discussion by members and agreement with Barrett.
- (2) The League insist that the Forsyth County Courthouse be made available to the Forsyth County Defense League instead of the City Hall. There was discussion then a unanimous vote in agreement with Barrett.
- (3) The League advise Barrett of any inquiries into the Forsyth County Defense League, and he will send a computerized letter thanking them for their interest

and giving a brief summary of the Forsyth County Defense League.

- (4) An emblem be adopted as a symbol of the Forsyth County Defense League. Barrett offered an emblem which was accepted by unanimous vote. It shows a red background with a combination of a cross and a star in white outlined in blue. The symbol stands for "Victory - North, South, East, West."
- (5) A display be set up at the march to allow articles to be sold supporting the Forsyth County Defense League.

Walter Wade and Lee Bates have purchased poster board and letters and are making posters and signs for the march.

A mimeograph machine was made available by Gary Clifton.

Dave Holland has made his sound system available.

Donations will be collected at the march and other meetings. Jerry and Deborah Lord will be in charge of these collections assisted by Lee Bates and Walter Wade.

Martha Staton donated a table to be used at the march to display literature.

There was discussion about slogan's [sic] used by the Forsyth County Defense League. It was decided there would be no profanity, racism, or hatred depicted on signs or posters. The following suggestions were made:

Liberty, Majority, Victory
 Down with Tyranny - Up With Liberty
 Majority Not Minority Rule
 Forsyth - Love It or Leave It

Justice for All - Favors for none
 America for Americans
 Constitution not Communism

We Are The People
 U.S.A. Stays Free
 We The People
 The Future is Ours
 This Land is Our Land
 We Are Rising Again

It was voted that membership be open to all White, Christian people who will take the following oath:

"I swear or affirm my belief in freedom as the greatest endeavor, in America as the supreme nation, in Christianity [sic] as the superlative religion, in social justice as the noblest pursuit, in the White race as the ultimate civilizer, in the English language as the premier voice, in the work ethic as the incomparable standard, in countrymen as the noblest fraternity, in nationalism as the unconquerable force, and in democracy as the best government."

All persons present at this first organized meeting of the Forsyth County Defense League took this oath. A list of the members present is as follows:

Richard Barrett	Rev. E. S. Hall	Frank Shirley
Lee Bates	John Lamb	Junior Staton
Betty Brock	Deborah Lord	Martha Staton
Dena Brock	Jerry Lord	Walter Wade
Lori Brock	Wendy Lord	Beverly Watts
Gary Clifton	Judy Scruggs	Mark Watts
Edward Frix		

The meeting was adjourned with prayer by Rev. Hill followed by pictures made of the new officers and all people present.

Betty Brock
Secretary
Forsyth County Defense League

APPENDIX Q

The April meeting of the Forsyth County Defense League was held on April 9, 1987, at the Forsyth County Courthouse. At 7:15 P.M. the meeting was called to order by Frank Shirley with invocation given by Rev. Billy Smith.

Frank Shirley discussed allegations made in the suit filed against the FCDL by Morris Rees on behalf of Hosea Williams and the NAACP. He said the charges were invalid and that the FCDL intended to expose Morris Rees and file a counter suit for violation of the rights of the FCDL. Shirley also commented on the bi-racial committee's reference to investigating "hate groups" and gave support for the retention of our present State Flag.

Richard Barrett read a document comparing the demands of Hosea Williams with the objectives of the FCDL. This document was then voted as an official document of the FCDL.

Rev. Billy Smith read a "Statement of Christian Ministers in support of True Christian Love and Freedom in Forsyth County, Ga." This letter was adopted as an official document of the FCDL.

The floor was then opened to anyone wishing to speack, [sic] make comments, or ask questions. All elected officials present were recognized.

Richard Barrett submitted a resolution to the FCDL that "intimidation and oppression of the FCDL to freedom of assembly and their rights" be stopped and that the GBI be abolished. This resolution was accepted as a policy of the FCDL.

The business portion of the meeting was then conducted with Frank Shirley as moderator. The by-laws were passed around to be read by those present and then were accepted as the official by-laws of the FCDL.

Barrett gave the treasurer's report. Since Mark and Beverly Watts had resigned from the FCDL, they had submitted a report to Barrett of money they had received and disbursed. Part of the treasurer's report was outstanding since Deborah Lord was not present to give her report.

After a brief interruption and discussion, it was agreed by all present that the FCDL was not a part of the KKK.

New officers were elected at this time as follows:

Chairman elect - Richard Barrett (until his services in the case with Morris Rees is settled. [sic])

1st Vice-Chairman and Acting Chairman - Junior Staton
 2nd Vice-Chairman - Garry Clifton
 Secretary - Betty Brock
 Treasurer - Judy Scruggs
 Chaplain - Billy Smith
 Youth Coordinator - Lee Bates
 Director of Information - Frank Shirley

It was voted that no drinking would be allowed at any meetings of the FCDL.

Jerry Lord and Edward Frix resigned as members of the FCDL.

The regular business meetings of the FCDL will be held at the Forsyth County Courthouse in the Community Room on the 2nd Thursday of each month at 7:30 P.M. with the next meeting being May 14, 1987.

The meeting was then adjourned with prayer by Rev. Billy Smith.

/s/ Betty Brock
 Betty Brock
 Secretary
 Forsyth County Defense
 League

APPENDIX R

The May meeting of the Forsyth County Defense League was held on May 14, 1987, in the Community Room of the Forsyth County Courthouse. At 7:20 P.M., the meeting was called to order by Junior Staton with invocation given by Pastor Gene Hall, followed by the pledge to the flag of the U.S.A.

The minutes of the April meeting were read. Corrections were made and the minutes were approved.

The Treasurer's report was read and approved. Deborah Lord has not contacted anyone to turn over her part of the treasurer's report. Attempts to contact her will be made by the next regular meeting.

There were no reports from any committees.

OLD BUSINESS:

Richard Barrett presented Jackie Little with a U.S.A. Flag as an award for her arrest at the January 24, 1987, march and subsequent court acquittal. Barrett is to get certificates to be presented to all those arrested at the marches to show moral support from the FCDL for their standing up for their rights.

NEW BUSINESS:

Due to some mixup of the meeting time, it was voted that regular meetings of the FCDL would begin at 7:30 P.M.

Richard Barrett presented the following items:

1. There was discussion of cases still pending on those arrested at the marches. Barrett has sent out a letter to persons who have inquired about the FCDL.

2. There will be a Washington News Conference on the east front center steps of the capitol in Washington, D.C., on Tuesday, May 19, 1987. Barrett encouraged all those who could to [sic] go with him.
3. Presented the FCDL with a charter which would make the League a non-profit, tax-exempt, charitable organization. Barrett briefly read the main points of the charter. He suggested the charter be shown as the "Nationalist Movement" as an umbrella for any and all organizations such as the FCDL. He suggested that the organization be chartered in Mississippi since the fee for such would only be \$25 compared the [sic] \$75 in Georgia. A motion was made and voted to accept Barrett's suggestions.
4. A special program of interest to the FCDL would be aired on TV on Channel 36 in the near future.
5. Barrett told about his interview on WEST. Pastor Hall told of a radio talk show which airs beginning at 7:00 - 9:00 P.M. (depending on the previous broadcast) to which anyone could call in and express their opinions on any subject (1-800-WSB-TALK).
6. A letter has been sent to Gary Armes, pastor of the 1st Christian Church in Cumming, and Roger Crowe challenging them to a debate with the FCDL on spiritual aspects of it's [sic] cause. There has been no response.
7. Encouraged members to write "letters-to-the editors" of the local newspapers.
8. Plans are being formed for an outdoor rally to promote more members and interest in the League. Anyone who knows of any property to hold the rally on should contact Barrett.
9. The FCDL has a new Post Office Box (#1321). All literature will be changed to accomodate [sic] this

address. Any mail addressed to P. O. Box 684 will continue to go to Barrett in Mississippi.

10. Encouraged those present to take some literature he had brought and pass it out or leave in certain areas in town.
11. The FCDL has a valid lawsuit against Forsyth County because it was denied a march and rally and use of the courthouse. Barrett said he opted to drop any charges and not prosecute in lieu of attorney's fees. He said this would show good faith on the part of the FCDL and perhaps save the County a lot of money. Also, in the Morris Dees case, Barrett has offered not to file a countersuit if Dees will dismiss all charges against the FCDL.
12. Said that one head of the "3-headed dragon" had been cut off with Gary Hart's dropping out of the Presidential Candidacy. Pastor Hall suggested we remember Acts 13:1.
13. A small victory has been won with the acquittal of two people who were arrested at the march on January 24th. There was an applause for these two people and the jury that acquitted them.
14. There are radio stations all over the U.S.A. that will make interviews over the phone. Barrett suggested the League consider making use of this means of publicity.
15. More pamphlets and literature needs to be printed and made available to the public.
16. A letter has been sent to David Duke requesting the names of those who contacted him as a result of his letter under the name of the "Forsyth County Defense Fund". Much confusion was caused by his letter which resulted in monies being sent to him.

He has also been requested to advise the FCDL of the disbursal of funds he received.

17. A T-shirt fund has been established as a fund raiser for the FCDL. Donations to the fund were taken with Barrett encouraging each one to give \$20.
18. "Talent Search" forms were passed out. These forms list various areas in which help is needed in the FCDL. These forms are to be returned showing what areas individuals can and will participate.
19. Barrett is in the process of printing membership cards to be given to each member of the FCDL.
20. Barrett has been answering out of state inquiries about the FCDL.
21. Barrett has written and made copies of a "Preacher's Statement in Support of the FCDL." He asked anyone who knew a preacher(s) who would sign it to take a copy and pass it around. Bill Bohannan took a letter and said he knew a preacher who would sign it.
22. Membership applications were passed out to non-members present. Everyone who signed up at that time was presented a flag.
23. Barrett suggested the FCDL challenge Hosea Williams to a debate on neutral grounds. The pros and cons were discussed. There was concern that Williams would only benefit from this be [sic] receiving more publicity. However, Barrett said the League would also receive publicity. This was tabled until the next meeting.

Dennis Brock asked to be recognized at the end of the meeting after the press was excused. He made several attempts to let the press leave. However, Barrett insisted the League was formed to be open to the public and not

behind closed doors. Barrett tried to get Brock to wait and arrage [sic] a special meeting with the officers, but Brock insisted that all members present should be aware of what he had to say. Brock then accused Mark Watts of improper record keeping and mis-handling of funds and giving an invalid treasurer's report to the FCDL. He accused Barrett of covering up for the Watts' by not telling the truth to the FCDL or the press.

Barrett attempted to explain errors on the April treasurer's report stating that the FCDL could not go back and correct any mistakes that had been made. Brock told Barrett he was lying and still covering up and only wanted to run all the business of the FCDL for his benefit. He said Barrett only wanted publicity and money for himself.

There was much concern that the public had not been given the right impression of the FCDL and the new officers and all members present wanted to make sure the public knew the FCDL was making every endeavor to be as open and honest as possible. Barrett made the following statement on behalf of the FCDL to attempt to clear up any past misunderstandings and/or discrepancies:

"We regret the record keeping prior to the official organization of the FCDL was not kept in a satisfactory state of affairs. Beginning with the new board, we have kept, and will keep, full records open, honest, and acceptable; and we pledge the utmost integrity and dedication of each members of this board toward our goal of democracy, Americanism, and freedom. We urge the help of

every member of the FCDL and every good citizen to help us achieve this endeavor."

Judy Scruggs questioned opening a bank account and collecting mail. Barrett wanted to open a bank account in Mississippi because, he stated, the service charges would be cheaper. He also wanted all mail forwarded to him. Other members insisted that all correspondence and money should remain with the League and in Forsyth County and not in Mississippi. After much discussion, it was agreed by members present that the FCDL would use P. O. Box 1321 as the new mailing address and Judy Scruggs and Betty Brock would each be given a key and would make arrangements to meet and open the box at the same time. It was further agreed that Scruggs would open an account at a bank which would require two signatures to write and cash checks. Barrett suggested Junior Staton and Judy Scruggs sign the checks. However, Scruggs argued that it would not be best since she and Junior Staton were in the same family and would rather Betty Brock Sign with her since they were not related and were Treasurer and Secretary. Barrett said this was not the usual way checks were signed; however, the members decided it was the best way.

The new officers agreed they wanted to be as honest and open as possible to the people whom they represent and regretted any errors or discrepancies incurred prior to their election.

The meeting was adjourned with prayer by Pastor Hall.

/s/ Betty Brock
Betty Brock
Secretary
Forsyth County Defense
League

APPENDIX S

A special meeting of the FCDL was called on May 17, 1987, at the home of Junior Staton. The meeting was called to order at 2:40 P.M. with Staton presiding as Chairman.

This meeting was for the purpose of clearing up arguments, disagreements, and discrepancies discussed at the May 14, 1987, meeting.

The following items were discussed:

1. Pastor Hall submitted a newsletter he had received showing two items of interest to the FCDL:

National Movement	Spirit of America Day
Richard Barrett	Box 3333
P. O. Box 1182	Jackson, Miss. 39207 USA
Houston, Texas	
77251 USA	

There was concern with the National Movement and the proposed charter made under the name "Nationalist Movement." It was decided by unanimous vote that Betty Brock would write the Secretary of State of Texas and Mississippi to obtain further information on each of these organizations.

2. It was agreed by unanimous vote for Betty Brock and Judy Scruggs to go to the post office as follows:
 - 1) determine how the Box 684 was originally issued
 - 2) if to the FCDL, could it be turned over to the FCDL
 - 3) if not, how to get all FCDL mail going to Box 1321
 - 4) find out how many keys were issued to the box the FCDL would be using and perhaps changing the lock on the box.

Junior Staton had one key to Box 1321 which he had received from Barrett. He turned it over to Betty Brock.

3. It was decided by unanimous vote that the FCDL should be chartered in Georgia. A suggestion was made that the charter by "Defense Leagues of America" based in Cumming, Forsyth County, Georgia. This organization would remain FCDL as the home office.
4. Junior Staton was elected by unanimous vote to talk with attorney Jane Kent Plaginos regarding the FCDL being chartered and becoming a corporation and if she would be the Leagues' legal attorney.
5. There was concern over the fact that Barrett was printing material and sending out correspondence without prior approval from anyone in the FCDL. It was agreed by unanimous vote that Barrett be advised to stop any communications in reference to the FCDL without prior approval of the League. Also, any fees to him should be discussed with the League since he had self-appointed himself and volunteered his services as a legal spokesman and was not the League's attorney. He should not make any further printing, purchases, or other expenditures without approval by the League. Staton agreed to compose a letter to him.
6. All present agreed and unanimously voted that it would be in the best interest of the FCDL for Judy Scruggs to open an account with the Forsyth County Bank requiring her's and Betty Brock's signatures on the checks. Also, to give the Bank permission to release information to anyone requesting information about the account if they have an account number from the FCDL. The League felt that any money in the account belonged to the citizens of Forsyth County and the amount in the account should be no secret.

7. It was felt that an apology to the citizens of Forsyth County and other supporters of the FCDL should be made and put in the local newspapers. This apology would be for anything out of the control of the new officers and members which has caused any misunderstanding or discrepancy. This item was tabled until the next meeting to allow time for current discrepancies to be resolved.
8. The membership application is not satisfactory to the FCDL as worded. Discussion for the correct wording was made. Garry Clifton is to work on a new membership application to present at the next meeting.
9. The new officers and members of the FCDL felt that the main problem with the League now was unresolved involving correspondence and money from Mark Watts and the cover-up by Barrett. It was voted by unanimous vote that Garry Clifton, as a representative of the FCDL, and Dennis Brock, as a witness to what he knew was fact, go to Rafe Banks and discuss how the FCDL could clear up any questions including:
 - 1) discrepancies on Watts' treasurer's report
 - a) phone bills
 - b) invalid receipts
 - c) money received
 - d) donations
 - e) mail he received
 - f) P. O. Box 684
 - 2) Frank Shirley's involvement with the FCDL
 - 3) Connections to David Duke
 - a) a letter sent out with Watts' signature for Forsyth County Defense Fund
 - b) money he has subsequently received

- 4) Barrett's cover-up and protection of Watts, Shirley, and Duke
- 5) correspondence forwarded to Barrett by the post office
 - a) money received and spent
 - b) letters and literature mailed out
- 6) Attorney fees requested by Barrett
- 7) Threats made by Watts
 - a) to the newspaper
 - b) to Dennis Brock
- 8) Lies that have been told and truths not told by Watts and Barrett.

The meeting was adjourned at 4:40 P.M.

/s/ Betty Brock
Betty Brock
Secretary
Forsyth County Defense
League

APPENDIX T

RICHARD BARRETT

LAWYER

LEARNED, MISSISSIPPI 39093

MAILING ADDRESS:

**POST OFFICE BOX 6700
JACKSON, MISSISSIPPI 39212**

**AREA CODE 601:
373-4400
885-2288**

July 17, 1987

Robert Stubbs III, Esq.
PO Box 1589
Canton GA 30114

Re: File #64-L FCDL

Dear Mr. Stubbs:

Administrator Roberts requested the names of the current representatives of the Forsyth County Defense League which he may have occasion to deal with. They are: Jim Harding, chairman; Joe McNamee, secretary; Richard Barrett, attorney (in the federal lawsuit); H. G. McBrayer, Georgia counsel.

The League meets at the Courthouse each second Thursday at 7:30 PM; since use of the building is connected with the pending litigation, Mr. Roberts may deal with me or Mr. Harding about administration of the room, premises, etc., or as you may propose. The organization would like to reserve the downstairs Community Room through December at this time.

As you know, the so-called Bi-Racial Committee meets in the Courthouse and excludes the public and press. The League favors the opposite kind of forum: one which is more open and representative of the views of the

citizens. However, the League is also entitled to security commensurate with the Committee or anyone else, as well as to an even-handed treatment in use of the Court-house facilities.

Lately, some individuals have attempted to disrupt the League's meetings or to video tape without the organization's consent. This has hampered the orderly conduct of League affairs.

Since it is illegal to disrupt a lawful meeting, I would appreciate the Sheriff being advised that the League desires to enforce its rights to conduct a lawful meeting without interference. To that end, it will exclude anyone who has been or is likely to be disruptive. Anyone who actually is disruptive will be removed and appropriate charges filed.

Naturally, it is the League's intent to avoid any possible confrontations or breaches of the peace; this letter is to secure appropriate cooperation and coordination toward such end by all concerned. And to do so without delay in time for the August 13th meeting.

The interim accounting you requested is enclosed.

Perhaps you will advise me of the outline I previously submitted to you for a constitutional and satisfactory parade ordinance, so we may close this file and spare additional expenses to the taxpayers. We had offered to conclude the litigation, but have had no reply from you. Obviously, having won the right to exercise their constitutional rights to freedom of speech, the citizens of Forsyth County cannot now abandon these important freedoms.

As I advised you before, the League desires a lawful parade ordinance; the current one abridges too many of the First Amendment rights of citizens to speak and assemble, but a suitable ordinance (as I submitted to you) is simple, proper and should be enacted without further delay.

Sincerely,
/s/ Richard Barrett

rb:hs
Encls.

APPENDIX U
BULLETIN OF
Forsyth County Defense League
"All The Way"

VOL. 1 #2 - AUGUST, 1987

BANQUET SEPT. 4TH

The long-awaited "Sons of Liberty" Banquet honoring the 1987 patriots who opposed the Black Power Invasion of Forsyth County will be held September 4th. *The gala even will be at 5:00 PM at the Dinner Deck Restaurant at Cumming, Georgia.* Those arrested, harassed and beat up will receive the honors of a grateful community and nation. General public and all Nationalists welcome! Tickets \$15.00 each in advance.

PARADE POSTPONED

The Sept. 5th "Constitution Revival" Parade in Cumming has been postponed. Forsyth County and the City of Cumming did not meet the August 13th deadline to notify us of the parade permit application approval. But negotiations continue and you shall rise again - at a later date to be announced.

ARRESTEES INVITED

Those arrested for opposing Hosea Williams and his gang will receive a free ticket for themselves for the Sons of Liberty Banquet, Friday, Sept. 4th. But, you must make

your reservations in advance (return form on the reverse).

SPECIAL SPEAKERS

"Sons of Liberty" Banquet speakers will include Richard Barrett of Mississippi, a key organizer of our January 24th counter-protest, and Rev. Jimmy Wynn of Lawrenceville, a leading speaker at our Majority Rights' Freedom Rally in March. The theme: "Heroes Today: Patriots Forever." The bi-centennial of the Constitution will also be celebrated. Barrett will also speak at evening observances at Stone Mountain, Georgia, September 5th.

T-SHIRTS

"White Forsyth: Free USA" T-shirts are now available. (Six colors, super sharp). Order yours. Also "No Black Power" buttons are hot off the press. Wear yours as a proud, free American.

MULATTO COMMITTEE QUILTS

The Mulatto (Bi-Racial) Committee has quit using the Forsyth County Courthouse and has gone out of business, thanks to FCDL opposition. It was organized with great fanfare to integrate the County. Not a single one of its many demands has been met.

DEES DEFEATED IN BIG LEGAL VICTORY

The FCDL has compelled left-wing lawyer Morris Dees to dismiss it from the lawsuit Hosea Williams filed

against anti-black power patriots. The ultimatum to Dees was to be slapped for attorney fees, costs and damages. This is the first major defeat for Dees, who had vowed to bust your League at all costs. Dees also tried to get the League's records but failed. Said league attorney Richard Barrett in a news conference at the Alabama Capitol: "I've come to Alabama with Morris Dees over my knee."

Now, citizens can join in patriotic activity without fear of harassment. The suit charged that the FCDL "discriminated" against non-whites with violence and harassment. By dismissal "with prejudice," all the charges are deemed in law to be false and can never be raised again.

NO MEMBERS' NAMES TO SHERIFF

Forsyth County Sheriff Wesley Walraven has asked that your League deliver a list of its members to him as a condition for using the Courthouse for regular monthly meetings. This demand has been refused. Your freedom of association, assembly and speech will not be compromised in any way.

SUPPORT BORK

The FCDL has approved a resolution supporting the confirmation of Robert Bork as Supreme Court Justice. Bork, a conservative, has taken stands upholding the Constitution and reversing the so-called civil rights' edicts of the past few years. Resolutions also supported Ollie North and the Contras, condemned Gov. Joe Frank Harris' newly appointed Human Relations Council as a "sneak attack against majority working people" and

launched a membership recruiting drive in North and South Georgia.

ADL ATTACKS

The Jewish Anti-Defamation League (ADL) has attacked the League calling it a "white supremacist" organization. It credits you as being the chief opposition to black power. Numerous other editorials and papers have commented on the impact of the League on the whole nation and the effectiveness of your organization.

Y'ALL COME

All patriots and Nationalists are urged to attend your League meetings each Thursday at 7:30 PM at the Forsyth County Courthouse in Cumming. Next is September 10th. Let us know if you can attend and help organize weekend rallies around Georgia.

POSTERS

New Posters will cost over \$1,200.00.

White
Forsyth
Free USA

If you would contribute to this project, we will assure that teenagers will be supplied the posters they have requested - and the inspiration they need.

TIFTON DRUGGIST BACKED

A letter of support has been sent to the Ewing-Cox Northside Pharmacy in Tifton, Georgia, where the druggist recently exercised his freedom of choice to hire (or

fire) whom he pleased. The FCDL said: "What separates the USA from Russia is that we believe in private property and individual rights: the right to have a business, to own land and to hold in your hands the fruits of your own labor. Because communism is on the march, you will be maligned and attacked. But stand your ground, so America will be free." The druggist rightly felt that he (and his customers), not the NAACP, should decide who he employs.

CAPTIVE NATIONS' ALLIANCE

League officials met in Washington with leaders of Eastern Europe Freedom Fighters recently headed by Rumanian [sic] Nationalist Dr. Serban Andronescu. An anti-communist alliance was formed, including a picketing of communist embassies.

LETTERS

I saw your Majority Rights' Freedom March on TV.
You all look great!
-J. P., Mass.

I share "All The Way" with friends. It makes me proud.
-J. K., Ill.

You are catching on here in a big way. People are ready.
- J. W., Calif.

ORDER FORM

NAME _____ ADDRESS _____

CITY _____ STATE _____ ZIP _____ DONATION \$ _____

Annual Member:

regular \$20.00 Youth \$12.00
 Newsletter \$12.00 a year
 T-Shirt size _____ \$10.00
 _____ Banquet Reservation(s),
 Sept. 4th, \$15.00 each

Forsyth County Defense League
 PO Box 1321 / Cumming, Georgia 30130

An Independent Affiliate of The Nationalist Movement

APPENDIX V

Forsyth County Defense League
LOGO
(601) 373-4400

PO Box 1321
Cumming GA
30130

An Independent Affiliate Of The Nationalist Movement
COMMISSIONERS COPIED

August 18, 1987

Mr. Ralph Roberts
Forsyth County
PO Box 128
Cumming GA 30130

Dear Mr. Roberts:

Thank you for your letter of August 13th just received regarding our meetings at the Courthouse. Kindly note that we wish to continue to meet the second Thursday (you letter said Tuesday), 7:30 PM, in the Community Room.

We take exception to treatment which differs from that accorded to the Bi-Racial Committee (it met behind closed doors and excluded the press and the public). Notwithstanding, we are pleased to cooperate with you, Mr. Roberts, and we do appreciate your accommodating us.

As to your recommendations:

1. Access to all orderly persons.

Agreed.

2. No locking of doors.

Agreed.

3. Access to press.

Agreed as to all authorized press of recognized media with proper identification only.

4. Conduct to avoid deputy from having to respond.

We agree to do our part; that is, we all continue to conduct our business, present speeches and take positions on issues of public importance in an orderly manner. However, some outsiders have attempted to disrupt our meetings. Consequently, we respectfully wish to protect the rights of those attending and, to such end, seek assistance from law enforcement to exclude or prosecute anyone engaging in disorderly, disruptive or illegal conduct.

5. Furnish list of members.

Not agreed. This would violate (or tend to chill) the Constitutional rights of members (and the public attending) to freedom of assembly, association, speech and the right to petition.

However, an alternative is suggested. You may certainly have the name of our principal officials, who are: Jim Harding, Chairman; Joe McNamee, Secretary; and Richard Barrett, Attorney.

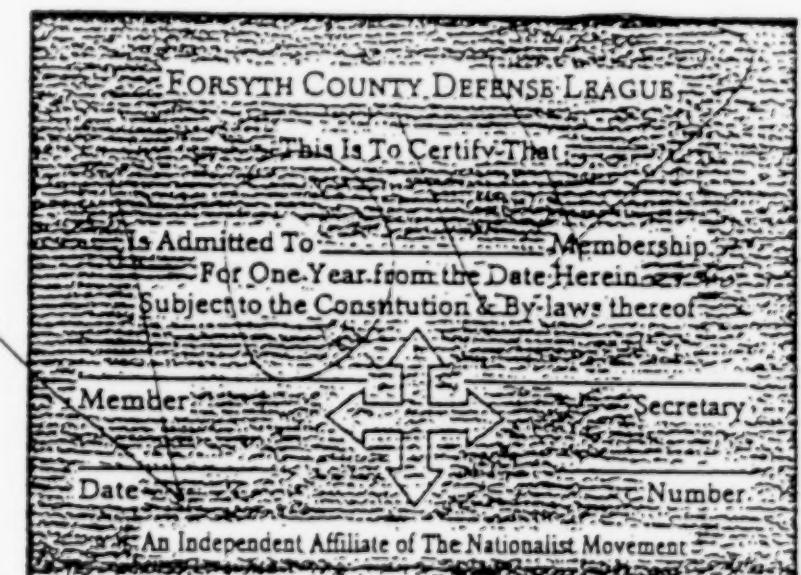
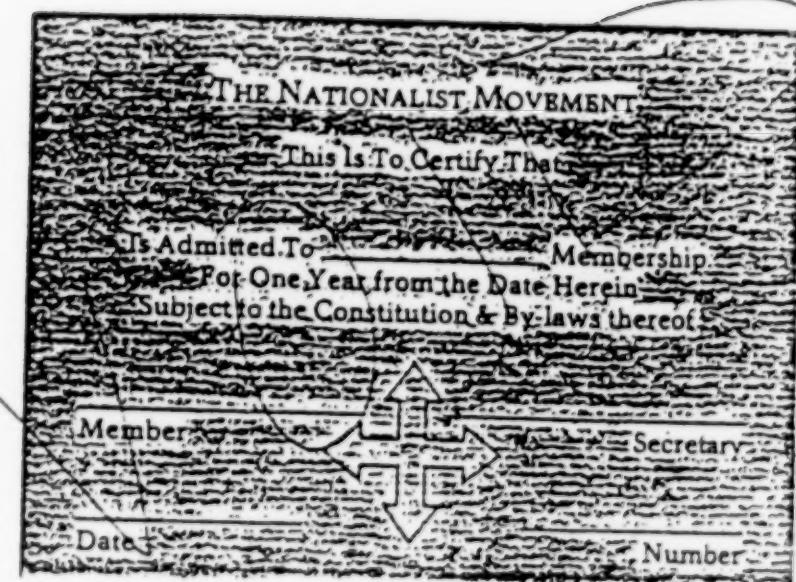
In addition, *enclosed are facsimiles of our membership cards* which members will be asked to bring. We do not envision opening up wholesale card checking or interfering with those genuinely interested in attending meetings, of course.

I hope this adequately responds to your concerns and that you can grant our request for the reservations. With regards, I am

Yours Sincerely,

/s/ Joe Mc Namee
JOE MC NAMEE
Secretary

jm:hs
Encls.



APPENDIX W
BULLETIN OF THE
FORSYTH COUNTY DEFENSE LEAGUE
"ALL THE WAY"

VOL. 1 #4 – OCTOBER, 1987

LOGO

TAR HEEL NATIONALISTS MARCH ON

A determined "no retreat" policy combined with an outpouring of blue-collar support has defeated an attempt by North Carolina officials to prevent Nationalists from organizing in the Tar Heel State. Our first "beach head" was established in Spindale, but the two tried to stop meetings in the city auditorium, only to back down when a lawsuit, similar to the one we won for free speech in Forsyth County, was promised. Freedom is not free! A price must continually be paid by the downtrodden.

NORTH CAROLINA MARCHES PLANNED

"Majority Rights" freedom parades and rallies are on the drawing boards for Greensboro, December 20th, and Raleigh, January 16th. The events will focus on Constitutional Revival, Workers' Rights and abolition of the King Holiday. Youth and working people (especially hard-pressed cotton mill workers) are invited to take part. Lift the yoke of your oppression by job quotas, affirmative action and anti-majority tyranny. This land is your land. Take every inch of your turf-back!

FORSYTH RALLY VICTORY COMPLETE

The FCDL has won an unqualified victory over Georgia Governor Joe Frank Harris and state officials who tried to bar citizen participation in its outdoor public activities. The City of Cumming, after a 10-month federal court battle, relinquished its opposition to the January 23rd Anti-Kind, Pro-Work Parade and agreed that no fees would be charged. Forsyth County attempted to levy a \$100.00 rally fee in a new ordinance, but the federal court refused to validate the measure, despite the County and the ACLU teaming up to force the unconstitutional law upon the people. The County was also ordered to pay the FCDL's attorney fees for depriving Forsyth County citizens of their freedom of speech.

BIG PRO-WORK, ANTI-KING PARADE JAN. 23

The hard-fought-for Constitution Revival "Let the People Rule" Parade is scheduled to assemble Saturday, January 23rd, 1988, at the Forsyth County High School in Cumming, Georgia, at 11:00. The March begins at Noon, down Tribble Gap Road, to the Courthouse for rally and speeches until 2:00 PM. All patriotic youth and working people are invited to march. On the anniversary of the January Invasion, the event should be the most significant anti-Martin Luther King happening in the country. This year's theme: Those who work shall not support those who loaf.

FLORIDA ORGANIZATION SPEEDS UP

Following our two-hour broadcast on Tampa's WFLA, a deluge of request for membership and literature has poured in. To keep pace, Nationalist organizers will visit South Florida shortly speaking and holding news conferences. Contact headquarters if you can assist or wish to attend.

SNAPPY PAMPHLETS SPREAD THE WORD

By popular request, two eye-catching recruiting pamphlets are not available. #10 - "The Forsyth County Covenant details the platform for national revival. #12 - "Why Join The Nationalist Movement" inspires youth to sign up now. Order yours for 1-on-1 organizing. And enlist your friends.

TO MEET OR NOT TO MEET

Nationalists are urged to form local units. Organization manuals are now being made up. Or, you may be a member or contributor to headquarters. *Regular meetings are at the Forsyth County Courthouse (basement), each 2d Thursday, at 7:30 P.M.* Your national committee will be named shortly. Be a regular donor to assure social justice, real Americanism and majority rule.

INPUT AND OUTPUT

Coordinator Scott Weaver announces that a complete list of literature, books, audio tapes and videos will be ready shortly. But member input is just as vital as our output. Through questionnaires and surveys, let us know

of your talents and plans for The Movement. We are mobilized for action. Needed are headquarters staff, writers, organizers and workers.

BORK OR BUST

Nationalist resolutions supporting confirmation of Robert Bork to the Supreme Court have been delivered to key legislators. Apparent that existing "rightist" efforts are inadequate to advance the American Way of Life, The Movement's activities in the future should prove all the more decisive. If Bork bombs, unlatch the Hatch: Orrin Hatch, that is.

DEES BACKS OFF LEAGUE

Left-wing lawyer and Gary Hart fund-raiser Morris Dees had been attacking the FCDL on national television before July 17th. On that day, all charges he had brought against the FCDL in behalf of his client, black-power activist Hosea Williams, were thrown out of court. Since then, Dees has not commented publicly about The League he once vowed to destroy. He also has dropped his threat to secure a court order against the League for taking pictures of him or his clients. The FCDL has charged that Dees is trying to install a Sandanista-style government in America - with special favors for the few and injustice for all.

CARAVAN TO AROUSE NORTH GEORGIA COUNTIES

Eight North Georgia Counties will be caravanned with speeches and literature beginning on weekends next

month. They include: Dawson, Union, Fannin, Murray, Catoosa, Rabun, Towns and Gilmer, which are over 99% white. Volunteer. Take part.

LETTERS

In Poland, outlawed groups throw leaflets all over the streets at night for the curious to pick up and read the next day. Because the left has become institutionalized (Negro College Fund, Urban League, "Open Housing," etc.) we must use unorthodox ways to sound the trumpet of freedom. Let's wake up the sleeping masses here in time to end the nightmare of red-power and black-power.

— T. M., Pinellas Park, FL

I admire your courage. It is not too late to turn this country around. "Free" to minorities means taking any darned thing we've got . . . our homes, our daughters, our paychecks, our rights. To be truly free, Americans must be free of the demands of the minorities, misfits and their ilk.

— R. M., San Francisco, CA

The stock market crashes again. About time. All that unearned wealth pilfered from hapless farmers, truck drivers and carpenters by pencil pushers on Wall Street. When bankers have their britches paddled by the very working people they've gouged with extortionate interest rates so long, there'll be prosperity for those who earn their bread by the sweat of their brow.

— S. J., Anderson, SC

ORDER FORM

NAME _____ ADDRESS _____
CITY _____ STATE _____ ZIP _____ DONATION \$ _____

Annual Member: [] Regular \$20 [] Youth \$10
[] Newsletter \$12 a year [] T-Shirt size _____ \$10 gift
[] Buttons 2 for \$1 gift [] Literature packet: free

Forsyth County Defense League
PO Box 1321 / Cumming, Georgia 30130

An Independent Affiliate of The Nationalist Movement

[Envelope]
PO Box 1321
Cumming GA 30130

[Stamp]

Ralph Roberts
Forsyth County
Forsyth County Courthouse
Cumming GA 30130

Address Correction Requested